UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

American Lines, LLC,	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	3:03-CV-1891 (JCH)
v.	:	
	:	
CIC Insurance Company,	:	
A.V.V., S.A.,	:	SEPTEMBER 30, 2004
Defendants.	:	
	:	

RULING RE: MOTION TO DISMISS [DKT. NO. 11] AND MOTION FOR PERMISSION TO FILE A REPLY BRIEF IN EXCESS OF TEN PAGES [DKT. NO. 51]

Plaintiff American Lines, LLC[1] ("American Lines") brings this action against defendant CIC Insurance Company, A.V.V., S.A. ("CIC") pursuant to 28 U.S.C. § 1333, the Connecticut Unfair Insurance Practices Act, Conn. Gen. Stat. § 38a-815 *et seq*. ("CUIPA"), and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110b *et seq* ("CUTPA"). American Lines alleges CIC breached its maritime insurance contract with American Lines, breached the covenant of good faith and fair dealing, fraudulently concealed its misdeeds, engaged in unfair or deceptive insurance practices under CUIPA, and engaged in unfair and deceptive trade practices under CUTPA. CIC brings this motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, for lack of personal jurisdiction pursuant to Rule 12(b)(2), for improper venue pursuant to Rule 12(b)(3), for *forum non conveniens*, and for failure to state a claim as to the Fourth and Fifth Counts pursuant to Rule 12(b)(6). CIC also

[1]This action was commenced under the name "American Shipping Lines, LLC." After CIC filed its Motion to Dismiss arguing the case should be dismissed, *inter alia*, because the plaintiff did not exist, the parties filed a stipulation [Dkt. No. 15] correcting the plaintiff's name to American Lines, LLC.

requests leave to exceed the page limit set for replies under Rule 7(d) of the Local Rules of the United States District Court for the District of Connecticut. For the following reasons, CIC's motion to dismiss is **DENIED** and its request for leave is **GRANTED**.

I. BACKGROUND[2]

American Lines, a Bridgeport, Connecticut-based LLC, chartered a ship named the R/R WHITE SEAL ("White Seal") from Rhodes Partners in Panama in 2002. American Lines planned to use the White Seal to transport vehicles between the ports of Bridgeport, Connecticut; Brooklyn, New York; Santo Domingo, Dominican Republic; and Miragoane, Haiti. Pursuant to its commercial plan, American Lines sought appropriate insurance for the White Seal, and eventually turned to Geoffrey Woodcock of Intercoastal Marine Services, Ltd. ("IMS"), an England-based broker for CIC Insurance Company, A.V.V., S.A., a Costa Rican company with its home office in Amman, Jordan. During negotiations, Woodcock kept in contact with American Lines in Connecticut via telephone, fax and electronic mail. He also traveled to Bridgeport and met with American Lines officials at their offices located at 525 Seaview Avenue in an attempt to secure American Lines' business. Woodcock proved successful.

When the terms of the deal were set, Woodcock forwarded correspondence to American Lines' offices dated December 12, 2002, stating that CIC would insure the White Seal for American Lines for a term of twelve months. American Lines began

[2]For the purposes of this motion to dismiss, the court must accept plaintiff's allegations as to fact as true. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

making premium payments to CIC from its place of business in Bridgeport, via IMS. The White Seal then began making trips between Bridgeport, Brooklyn, Santo Domingo, and Miragoane. During a return voyage, it foundered and sank off the coast of Wilmington, North Carolina, on or about January 23, 2003. During the month it took the White Seal to sink, American Lines kept in contact with CIC, including with David King, one of CIC's directors. American Lines requested direction with respect to such issues as the sue and labor provisions, and the repatriation of the White Seal crew to its homeland in the Ukraine.

American Lines submitted claims to CIC regarding the sue and labor provisions; the protection and indemnity provisions; and finally the hull and machinery and P&I coverage pursuant to the insurance coverage American Lines had purchased from CIC. CIC appointed Ray Ashton & Associates ("Ashton") as its agent to investigate the loss of the White Seal. Ashton investigated the loss and maintained contact with American Lines in Connecticut via telephone, fax and email. Ashton notified American Lines that CIC had denied its claim concerning the White Seal on or about April 9, 2003. American Lines filed the instant case on November 5, 2003.

II. DISCUSSION

A. Subject Matter Jurisdiction

In considering a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, the court must accept all factual allegations in the complaint as true and draw all inferences from those allegations in plaintiff's favor. Jaghory v. New York State Dept. of Educ., 131 F.3d 326, 329 (2d Cir. 1997). The court may not dismiss a complaint unless "it

appears beyond doubt, even when the complaint is liberally construed, that the plaintiff can prove no set of facts which would entitled him to relief." Id. Where the existence of subject matter jurisdiction turns on a factual issue raised by the defendant, however, the court is permitted to look beyond the complaint itself and may consider evidence outside the pleadings. United States v. Vazquez, 145 F.3d 74, 80 (2d Cir. 1998); Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 108 (2d Cir. 1997). The burden of proving jurisdiction is on the party asserting it. Malik v. Meissner, 82 F.3d 560, 562 (2d Cir. 1996); see also Shenandoah v. Halbritter, 366 F.3d 89, 91 (2d Cir. 2004). "[W]hen the question to be considered is one involving the jurisdiction of a federal court, jurisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." Shipping Fin. Servs. Corp. v. Drakos, 140 F.3d 129, 131 (2d Cir. 1998) (omitting citations).

CIC argues that the instant case should be dismissed because the court does not have subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure because American Lines is not a Connecticut entity. See Def's Mem. Supp. Mot. to Dismiss at 7. CIC argues that American Lines does not exist as a legal entity, and hence cannot be a Connecticut citizen. See id. at 7-8. Therefore, the court cannot exercise diversity jurisdiction over the instant suit pursuant to 28 U.S.C. § 1332, or admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. See id. CIC's factual support consists of a search on the Connecticut Secretary of State's CONCORD system, the database of business organizations registered in Connecticut, executed using the name of the

originally-named plaintiff, which is the wrong company name.[3]

CIC's argument fails. American Lines submitted both an official copy of its Articles of Organization as a limited liability company in Connecticut, and a CONCORD search indicating that American Lines, LLC is a registered limited liability company in the state. See Pl's Mem. Opp. Summ. J. at Ex. C & D. This is sufficient evidence to survive a motion to dismiss based on a business entity's non-existence.

CIC next argues there is no subject matter jurisdiction over the claims asserted. However, long-established Supreme Court precedent makes clear that federal district courts have subject matter jurisdiction, specifically admiralty jurisdiction, over suits involving marine insurance. See Ins. Co. v. Dunham, 78 U.S. 1, 35-36 (1870). American Lines attached both a memorandum on CIC letterhead accepting an insurance relationship relating to the White Seal, and Cover Note No. CIC/27/SA/468 entitled "Marine Insurance" (the "Cover Note"), again on CIC letterhead, detailing a insurance arrangement with American Lines covering the White Seal for the dates in question. See Pl's Mem. Opp. Summ. J. at Ex. A & B. The White Seal is a nautical vessel that engaged in international shipping. See Kennedy Aff. at ¶ 16. Therefore, the marine insurance policy falls directly under Dunham. American Lines has pled the issue of subject matter jurisdiction sufficiently to survive a motion to dismiss, and come forward in opposition to the motion to dismiss with sufficient basis for the allegation. CIC's motion to dismiss based on lack of subject matter jurisdiction is denied.

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[3]In fairness to CIC, the original cause of action filed by American Lines incorrectly identifies the company as American Shipping Lines, LLC. Therefore, CIC's CONCORD search error is understandable.

B. Personal Jurisdiction

In order to exercise personal jurisdiction over CIC, the court must make two findings. First, there must be a Connecticut statute that confers jurisdiction over CIC. See Arrowsmith v. United Press Int'l, 320 F.2d 219, 223 (2d Cir. 1963). Second, the court must find that CIC's Fourteenth Amendment right to due process is not violated by requiring CIC have "minimum contacts" with Connecticut such that the court's exercise of jurisdiction would not offend "traditional notions of fair play and substantial justice", and it would be reasonable for CIC to expect to be haled into court here. See Int'l Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement, 326 U.S. 310, 316 (1945); see also World-Wide Volkswagen Corp. v. Woodsen, 444 U.S. 286, 297 (1980). If the defendant chooses to challenge personal jurisdiction by filing a Rule 12(b)(2) motion, the plaintiff can survive a motion to dismiss by making a *prima facie* case on personal jurisdiction. See Ball v. Metallurgie Hoboken-Overpelt, S.A., 902 F.2d 194, 197 (2d Cir. 1990).

A state statute that subjects foreign corporations to state jurisdiction on insurance contracts with residents satisfies the first prong. See McGee v. Int'l Life Ins. Co., 355 U.S. 220, 221 (1957). More specifically, "contracting to insure property located within a jurisdiction, even if the presence of that property is transitory, subjects a foreign marine insurer to jurisdiction on suits over such insurance." Armada Supply Inc. v. Wright, 858 F.2d 842, 849 (2d Cir. 1988). This is true even when the contract arose through the conduct of a defendant's agent. See id. "It is sufficient for purposes of due process that the suit [is] based on a contract which had substantial connection with that State" even if

"there may be inconvenience to the insurer if it is held amenable to suit in [Connecticut] . . . ." McGee, 355 U.S. at 223-224. The plaintiff can show a contract has a substantial connection with a state by showing, for example, that it was delivered in the state, premiums were mailed from that state, and the insured was a resident of that state. See id. at 223. The defendant does not show a lack of minimum contacts by showing that it never solicited or did any other insurance business in the state, never had any office or agent in the state, or that the defendant's agent never had any office or agent in the state. See id. at 222.

Connecticut General Statutes § 38a-271(a) states that a corporation is considered an insurer doing business in Connecticut if it engages in "[a]ny of the following acts effected by mail or otherwise . . . (1) [t]he making of or proposing to make, as an insurer, an insurance contract; . . . (4) the receiving or collection of any premium . . . for any insurance or any part thereof; (5) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state . . . ." American Lines clearly alleges that, at all times pertinent to this case, it was a limited liability company located in Connecticut, and that it informed Geoffrey Woodcock of these facts. See Kennedy Aff. at ¶ 11. It also alleges that Woodcock represented himself and his company as being an agent or broker representing CIC. See id. at ¶ 7. American Lines alleges that after negotiations, part of which took place in Connecticut, in which Woodcock represented CIC, 1) CIC entered into a marine insurance contract with American Lines to cover the White Seal, 2) CIC issued such a contract, and 3) American Lines paid premiums on that contract from its Connecticut bank to CIC. See id. at ¶¶ 7, 10, 12, 14,

15, & 17. Taking these allegations supported by affidavit as true, as the court must on a motion to dismiss, American Lines has made a *prima facie* case that Conn. Gen. Stat. § 38a-271(a) confers jurisdiction on this court over CIC, if CIC's due process rights are not violated. See, e.g., McGee, 355 U.S. at 221; Armada, 858 F.2d at 849.

American Lines allegations also make a *prima facie* case that CIC's due process rights, as laid out in International Shoe and World-Wide Volkswagen, are not violated. American Lines alleges that Woodcock served as CIC's agent for the purposes of making the marine insurance contract at issue, and that Woodcock negotiated the contract with American Lines by not only contacting American Lines via phone, email, and fax in Connecticut, but by traveling to Connecticut personally. See Kennedy Aff. at ¶¶ 10, 12, & 14. Additionally, American Lines alleges that it informed Woodcock that the White Seal would be trading between the port at Bridgeport, Connecticut and three other ports. See Kennedy Aff. at ¶ 13. Finally, American Lines alleges it paid premiums on the contract from Connecticut to CIC, via Woodcock. See Kennedy Aff. at 17.

CIC disputes much of what American Lines alleges, including the allegations that Woodcock acted as CIC's agent and that CIC had notice that American Lines was a Connecticut business, see King Aff. at ¶¶ 15 & 18. However, American Lines makes a *prima facie* that this was not the case. See Kennedy Aff. at ¶¶ 11 & 14. As such, it appears that CIC, through its agent, had as much or more contact with Connecticut in the making and maintenance of American Lines' marine insurance policy, as the defendant in McGee had when insuring a California resident. Therefore, CIC's due process rights are not violated by subjecting it to the jurisdiction of this court and CIC's motion to dismiss for

lack of personal jurisdiction is denied.

C. Venue and *Forum Non Conveniens*

CIC argues that Connecticut is the improper venue and an inconvenient forum for this suit, and that the suit ought to be tried in England, because the parties have contracted to use English law to litigate the marine insurance contract, because this venue is improper based on diversity jurisdiction considerations, and because CIC's evidence and witnesses are mainly to be found in Europe. See Def's Mem. Supp. Mot. to Dismiss at 17-21; see also Whitney Aff. at ¶ 20 & Ex. A. The argument for England is based upon a statement near the top of a rider to the insurance contract that reads "This insurance is subject to English law and practice." Whitney Aff. Ex. A. American Lines alleges that it was never made aware of this provision, and hence it was not bargained for at arms length. See Pl's Mem. Opp. Mot. to Dismiss at 25-26; Lovejoy Aff. at ¶ 14. Additionally, it argues that all of the evidence and witnesses that it can foresee will be located in the United States and the Caribbean. See Pl's Mem. Opp. Mot. to Dismiss at 21-22. American Lines also argues that, to the extent the statement is binding at all, it merely speaks to the parties' choice of law and not to the appropriate forum. See Pl's Mem. Opp. Mot. to Dismiss at 24-25; Lovejoy Aff. at ¶ 13.

In admiralty cases, venue is proper in any district court which has personal and subject matter jurisdiction over the defendant. See JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 110.44 (3d ed. 2004); see also Internatio-Rotterdam, Inc. v. Thomsen, 218 F.2d 514, 515 (4 th Cir. 1955). As noted in sections II(a) - (b), *supra*, the court has subject matter and personal jurisdiction. Therefore, venue is proper here.

Title 28 of the U.S. Code, Section 1404 governs change of venue in the district court setting. Section 1404(a) provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). Section 1404(a) eliminates the district court's option of dismissing an action to seek a more convenient venue, replacing it with the ability to transfer the action to a more convenient venue. See JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 111.03[1] (3d ed. 2004). In order to gain dismissal because the proper forum is overseas, the defendant must move pursuant to the doctrine of *forum non conveniens*. See id. Due to the fact that venue is proper in the District of Connecticut, CIC has requested dismissal, and CIC listed no alternative domestic forum as more convenient, CIC's motion to dismiss on venue grounds is denied.

"To prevail on a motion to dismiss based on *forum non conveniens*, a defendant must demonstrate that an adequate alternative forum exists and that, considering the relevant private and public interest factors as set forth in *Gilbert*, 330 U.S. at 508-509, 67 S.Ct. at 843, the balance of convenience tilts strongly in favor of trial in the foreign forum." R. Maganlal & Co. v. M.G. Chem. Co., Inc., 942 F.2d 164, 167 (2d Cir. 1991). "Because there is ordinarily a strong presumption in favor of a plaintiff's choice of forum, that choice will not be overcome unless the relevant private and public interest factors weigh heavily in favor of trial in the alternative forum." Id. The applicable Gilbert factors include ease of access to sources of proof, availability of compulsory process for attendance of the unwilling, the cost of obtaining the attendance of the willing, all other practical problems

surrounding a case, the public interest in avoiding court congestion, the interest in having local controversies decided at home, and the interest in having foreign issues of law decided in foreign courts. See id. at 168.

The Gilbert factors do not weigh heavily in CIC's favor. The parties dispute the issue of ease of access to evidence and witnesses, the relative costs of conveying evidence and witnesses to court, and even the issue of whether English law applies. As the court must accept all allegations of American Lines as true, and draw all inferences in its favor, CIC cannot be said to emerge victorious on these issues. See, e.g., Scheuer, 416 U.S. at 236. Additionally, the public's interest in having the admiralty claim of a Bridgeport-based company decided at home weighs in favor of American Lines. While the court is certainly aware that federal courts carry a heavy workload, there is nothing in the record to convince the court that it will cause "congestion" by retaining jurisdiction over the case at this time. The parties do not appear to argue a difference in the English and American compulsory process systems. Therefore, while CIC alleges several reasons why the courts of England may be a proper alternative to this court, it falls well short of the necessary showing. See, e.g., Maganlal, 942 F.2d at 168. CIC's motion to dismiss on *forum non conveniens* grounds is denied.

d. State Law Claims

CIC argues that American Lines' Connecticut state law claims should be dismissed because 1) they are state law claims that are not properly before the court based on diversity jurisdiction, 2) they are Connecticut state law claims that fail to state legally cognizable claims under the controlling English law, and 3) American Lines fails to state a

claim under CUIPA and CUTPA pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Def's Mem. Supp. Mot. to Dismiss at 21-22. CIC's first claim is frivolous. The court has subject matter jurisdiction over American Lines' admiralty law claims pursuant to 28 U.S.C. § 1333. As such, the court has supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy. . . ." 28 U.S.C. § 1367(a). CIC does not claim that the state law claims are not part of the same case or controversy. Therefore, its jurisdictional claim is denied.

As the court has noted previously, CIC and American Lines dispute the relevance of English law to this case. The court must take all American Lines' allegations as fact, and draw all inferences in its favor. CIC's motion to dismiss the state law claims based on English law is denied, without prejudice to renew on summary judgment.

On the substantive motion to dismiss for failure to state a claim, CIC argues that Lees v. Middlesex Ins. Co. provides support for the dismissal of American Lines' CUIPA claims. See 229 Conn. 842 (Conn. 1994). This is not the case. In Lees, the Connecticut Supreme Court faced a situation where the plaintiff failed to allege that the defendant insurance company engaged in similar unfair insurance practices on any occasion other than the one at issue in the suit. See 229 Conn. at 847-848. Since Lees made no allegation that Middlesex engaged in unfair acts "with such frequency as to indicate a general business practice", the Connecticut Supreme Court upheld summary judgment. See id. at 851. As CIC points out, American Lines' complaint alleges that CIC "sell[s] similar or identical policies to other Connecticut policy holders with the intention of

avoiding coverage on similar unfair or deceptive grounds." Compl. at 38. Based on the pleadings, the plaintiff states a claim.

CIC also argues that Odd Fellows Home of Connecticut, Inc. v. The Hartford Fid. & Bond Co. support CIC's claim that American Lines CUIPA and CUTPA claims should be dismissed because the complaint's allegations are conclusory and unsupported. See No. CV02081919247S, 2003 WL 1484319, at *1 (Conn. Super. March 12, 2003). However, in Odd Fellows, the plaintiffs again only failed to allege similar unfair acts by the defendant. See id. American Lines alleges the necessary acts and refers to a specific pattern "upon information and belief." Combined, these allegations are sufficient to defeat a motion to dismiss. CIC's motion to dismiss for failure to state a claim under CUIPA is denied.

CIC argues that if the court dismisses American Lines' CUIPA claim, it must dismiss American Lines' CUTPA claim. See Def's Mem. Supp. Mot. to Dismiss at 24. The court has not dismissed the CUIPA claim. CIC's motion to dismiss for failure to state a claim under CUTPA is therefore denied.

e. Request for Leave to Exceed Local Rule 7 Page Limit

CIC requests leave to exceed local rules concerning page limits on reply briefs. See LOCAL R.CIV.P. D. CONN. 7(d). CIC argues it "needs additional pages to respond to the many and new complex arguments and issues raised by Plaintiff in its Opposition . . . which consists of a twenty-seven page brief . . . ." Def's Motion for Permission to File Reply Brief in Excess of Ten Pages at 1. CIC filed this motion on the same day as it filed (improperly) its reply, which consisted of a twenty-one page memo and additional exhibits and affidavits.

The court first notes that American Lines stayed well within their forty page limit on their initial brief[4], see LOCAL R.CIV.P. D. CONN. 7(a)(2), so the court can see no good argument for a reply that more than doubles the court's limit. Additionally, the court did not note any arguments concerning jurisdiction in American Lines' response brief that were new, unusual, or remarkably complex. American Lines' brief appears to track CIC's memorandum in support fairly faithfully.

The Local Rules are not merely the hopes, dreams, or suggestions of this court; they make up the framework within which cases are decided in this district. They cannot be disregarded on a whim, nor will they be waived without a substantial showing of necessity. While the court can envision a situation where there is a need to waive the ten-page limit on reply briefs, perhaps even concerning the issue of jurisdiction, the court would not ordinarily be inclined to do so in this situation. Parties should consider that, if they cannot prove the court's lack of jurisdiction in the first fifty-pages, or in this case thirty-five pages, perhaps the argument is not as meritorious as first believed. However, given the court is ruling against CIC on its motion to dismiss, it will grant CIC's motion for leave to file a reply brief in excess of ten pages so that the record is as full as CIC seeks.

III. CONCLUSION

For the foregoing reasons, CIC's motion to dismiss American Lines' admiralty claims based on a lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, *forum non conveniens*, and American Lines' state law claims based on lack of

[4]It is appropriate to point out that CIC also complied with the court's Local Rule with regard to the page limit for its Memorandum in Support.

jurisdiction, failure to state a claim under English law, and failure to state a claim under Connecticut law [Dkt. No. 11] is **DENIED**. CIC's motion for permission to file a reply brief in excess of ten pages [Dkt. No. 51] is **GRANTED**.

SO ORDERED.

Dated at Bridgeport, Connecticut this 30th day of September, 2004.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge