UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Certain Underwriters at Lloyd's, London Purportedly at Interest,

Plaintiffs, | **Case No. 2:12–cv–160**

v. | **Judge Michael H. Watson**

Stonebridge Casualty Insurance,

Defendant.

OPINION AND ORDER

Plaintiffs in this diversity action seek a declaratory judgment that a reinsurance agreement allegedly signed between Plaintiffs and Defendant in 2004 is invalid because Plaintiffs have no knowledge of the alleged agreement. Defendant moves to transfer this action to the United States District Court for the Southern District of Florida where an arguably related action is pending, ECF No. 6, and to dismiss this action based on judicial efficiency, ECF No. 24. For the following reasons, the Court grants Defendant's motion to transfer and finds the motion to dismiss moot.

I. FACTS

Plaintiffs are five syndicates that underwrite reinsurance coverage as part of the market at Lloyd's of London. Specifically, Plaintiffs are Small Business Consortium, Syndicate #9056; S.A. Meacock & Co., Syndicate #727; R.J. Kiln &

Co. Ltd., Syndicate #510; Beazley Furlonge Ltd., Syndicate #2623; and Beazley Furlonge Ltd., Syndicate #623 (collectively, the "2004 syndicates").

Defendant Stonebridge Casualty Insurance Company ("Defendant" or "Stonebridge") is an Ohio insurance corporation with its principal place of business in Maryland. Stonebridge underwrites the Signature Lifetime Tire Customer Loyalty Rewards Program ("Tire Program"). The Tire program was provided by automobile dealerships to customers who purchased vehicles to encourage them to return to the dealership for all their scheduled vehicle maintenance. Under the terms of the Tire Program, customers who returned to the dealership for all of their scheduled maintenance were rewarded with up to two sets of tires over the six-year term of the warranty.

Stonebridge avers that in January 2004, Stonebridge's predecessor, Monumental General Casualty Company, asked D.W. Van Dyke & Co. ("Van Dyke") to obtain reinsurance coverage for the Tire Program. In May 2004, Van Dyke approached Michael Wiener ("Wiener") of Nation Motor Club, Inc., d/b/a Nation Safe Drivers ("NSD") in Florida regarding reinsurance coverage for the Tire Program. About one month later, NSD provided Van Dyke with a proposal for reinsurance coverage of the Tire Program to be underwritten by certain underwriters of Lloyd's of London. From June 2004 until December 2004, NSD negotiated on behalf of the underwriters of Lloyd's of London and ultimately brokered the reinsurance coverage through cynoSure Financial, a Lloyd's

coverholder. In December 2004, NSD faxed to Van Dyke the 2004 cynoSure agreement representing proof that the reinsurance coverage had been placed with the 2004 syndicates.

Toward the end of 2005, cynoSure's principal, Curt VandeVorde, informed Wiener of NSD that the 2004 syndicates no longer wanted to reinsure the Tire Program. NSD negotiated and brokered replacement coverage for the Tire Program through Mitchel Kalmanson of the Lester Kalmanson Agency, Inc. ("LKA"), another Lloyd's coverholder. In June 2007, NSD sent a Reimbursement Insurance Certificate to Van Dyke showing that Stonebridge had been added effective March 1, 2006 as an additional insured under a policy issued to NSD by certain Lloyd's syndicates. The five 2006 syndicates were R.J. Kiln & Co., Ltd., Syndicate #510; Beazley Furlonge Ltd., Syndicate #2623; Beazley Furlonge Ltd., Syndicate #623; MAP, Syndicate #2791; and HAR, Syndicate #2000 (collectively, the "2006 syndicates").

Beginning in 2010, Stonebridge made demands on both the 2004 and the 2006 syndicates to recover reinsurance coverage for the Tire Program. On September 10, 2010, NSD and the 2006 Syndicates (collectively, the "Florida plaintiffs") filed suit against Stonebridge in Florida seeking a declaration to avoid liability for reinsurance coverage on certain Tire Program certificates. *Nation Motor Club, Inc. D/B/A Nation Safe Drivers and 100% Certain underwriter's at Lloyd's of London v. Stonebridge Casualty Ins. Co.*, No. 9:10–cv–81157 (S.D.

Florida). The Florida plaintiffs allege Stonebridge failed to comply with the notification requirements of the reinsurance policy and improperly paid claims even when the dealership's customers failed to comply with the mandatory maintenance requirements. The Florida plaintiffs do not mention specific dates but state that the cover note at issue was procured from Lloyd's through the Lester Kalmanson Agency.

On September 30, 2010, Stonebridge moved to compel arbitration pursuant to the 2004 cynoSure agreement. On October 13, 2011, the United States District Court for the Southern District of Florida court ordered NSD and the 2006 syndicates to arbitrate their disputes with Stonebridge relating to reinsurance Tire Program certificates issued between March 1, 2004 and March 1, 2006 based on the 2004 cynoSure Agreement. Order 7, ECF No. 41. The court also ordered more discovery as to whether disputes for certificates issued after March 2006 should be arbitrated. *Id.* at 8.

On February 22, 2012, the 2004 Syndicates filed suit in this district against Stonebridge seeking a declaration they do not owe Stonebridge reimbursement because they never entered into and have no knowledge of the 2004 cynoSure agreement.

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 1404(a), "for 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."

The threshold question to transfer is whether the action might have been brought in the transferee court. *Kay v. Nat'l City Mortgage Co.*, 494 F. Supp. 845, 849 (S.D. Ohio 2007). This requires the Court to ask (1) whether the court in the Southern District of Florida could exercise original subject matter jurisdiction over the case; (2) whether that court would have personal jurisdiction over Stonebridge; and (3) whether venue would be proper in that court. *Zimmer Enter., Inc. v. Atlandia Imports, Inc.*, 478 F. Supp. 2d 983, 989–90 (S.D. Ohio 2007).

A decision to transfer venue is made "on an individual basis by considering convenience and fairness." *Kerobo v. Southwestern Clean Fuels Corp.*, 285 F.3d 531, 537 (6th Cir. 2002). It is the burden of the moving party to show why the action should be transferred, and the plaintiff's choice of forum must be given considerable weight. *Sky Tech. Partners, LLC v. Midwest Research Institute*, 125 F. Supp. 2d 286, 291 (S.D. Ohio 2000). In order for a change of venue to be appropriate, the balance of convenience must weigh heavily in favor of the transfer; § 1404(a) is not intended to shift an action to a forum likely to prove equally convenient or inconvenient. *Van Dusen v. Barrack*, 376 U.S. 612, 645–

46 (1964). In determining whether a transfer of venue is appropriate, the court must examine the convenience of the parties and witnesses, public-interest factors, and private interest factors. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 30 (1988).

III. DISCUSSION

Defendants argue it would be substantially more convenient for the parties, the Southern District of Florida, and this Court if this action were transferred to Florida and litigated in connection with the Florida case. Plaintiffs argue this case could not have been brought in Florida, and their choice of forum is not outweighed by other considerations.

A. Whether the Case Could Have Been Brought in Florida

Plaintiffs argue the Florida court would not have subject matter jurisdiction over this case because the parties in this litigation are bound to arbitrate in Columbus, Ohio and federal law establishes that arbitration can only be compelled by a district court in that forum.

Plaintiffs are correct the Sixth Circuit has held pursuant to the Federal Arbitration Act a district court may compel arbitration only within its own district. *Inland Bulk Transfer Co. v. Cummins Engine Co.*, 332 F.3d 1007, 1018 (6th Cir. 2003). That fact does not, however, strip the Florida court of subject matter jurisdiction over this action. This Court and the Southern District of Florida would both have diversity jurisdiction over this case as Plaintiffs have principal places of

business in England, Stonebridge is an Ohio corporation, and the amount in controversy exceeds $75,000. *See* 28 U.S.C. § 1332(b); Comp. ¶3, ECF No.2.

In addition, Plaintiffs argue that venue would not be proper in Florida. Venue is proper in:

> (1) A judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
> (2) A judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or
> (3) If there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 139(b). Defendant argues Florida is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred. Plaintiffs argue the only thing that happened in Florida was Stonebridge faxing a document there[1] and what really matters is where performance of the contract (i.e., arbitration) will ultimately occur.

Plaintiffs do not directly contest Defendant's allegations that the negotiations happened in Florida through NSD, but rather attempt to minimize them as mere faxing. However, negotiations of a contract are a substantial part of the events when the legal issue is the validity of a contract. *See Tech-Sonic, Inc. v. Sonics & Materials, Inc.*, No. 2:12–cv–263, 2012 WL 4343103, at *2 (S.D. Ohio Sept. 21, 2012) (considering where contract negotiated as part of

[1] Plaintiffs do not specify what document they are referencing.

substantial events). In addition, the possible arbitration of the contract in Ohio cannot determine the venue. Neither party has requested arbitration under the contract. Plaintiffs contest the contract's validity and have thus far elected to litigate rather than arbitrate this dispute. Accordingly, a substantial part of the events leading up to this litigation occurred in Boca Raton, Florida at the headquarters of NSD in the Southern District of Florida.

Finally, Plaintiffs argue in one fraction of a sentence that Defendant would not be amenable to process in Florida because Defendant is not connected to Florida except for this purported contract. The Florida court may, however, exercise specific personal jurisdiction over Stonebridge where the suit arises out of its contacts with Florida. *See Bird v. Parsons*, 289 F.3d 865, 874 (6th Cir. 2002). In addition, Stonebridge has already been served in Florida in the Florida case, and seeing as how it is now arguing for this case to be transferred there, cannot seriously challenge Florida's jurisdiction. Therefore, without engaging in the entire jurisdictional analysis on that court's behalf, the Southern District of Florida likely has personal jurisdiction over Stonebridge, and this action could have been brought there.

B. Convenience of the Parties and Witnesses

Defendant argues that because the contract was negotiated in Florida and all the witnesses and evidence are in Florida, the Southern District of Florida would be a more convenient forum. Michael Wiener of NSD resides within the

Southern District of Florida and all documents related to the 2004 cynoSure agreement went through NSD in Florida. Plaintiffs argue there are party witnesses in Ohio, Connecticut and/or Michigan but does not say who they are. Plaintiffs contend the fact there are documents in Florida is not an impediment to proceeding in Ohio. Because the only identified witness and evidence reside in Florida and most of the parties have some connection to Florida through NSD, this factor weighs in favor of transfer.

In addition, Defendant states that the only connection to Ohio is that Stonebridge is incorporated here and Plaintiffs' choice of forum is not entitled to the typical deference. Although a plaintiff's choice of forum is ordinarily entitled to some deference, it should be afforded less weight where the forum has no connection to the matter in controversy. *Shively v. Papa John's In'l, Inc.*, 2:08–cv–221, 2008 WL 2943342, at *3 (S.D. Ohio July 30, 2008). In addition, a plaintiff's choice of forum often carries less weight in a declaratory judgment action. *Zimmer Enter., Inc. v. Atlandia Imports, Inc.*, 478 F. Supp. 2d 983, 990 (S.D. Ohio 2007). Accordingly, less deference goes to Plaintiffs' choice.

Taking all these factors into consideration, the Court finds that the private interest of the parties and the named witnesses favor transfer to the Southern District of Florida.

C. Interests of Justice

Defendant argues transfer to the Southern District of Florida would avoid multiplicity of litigation and conserve judicial resources. Because the Florida case involves three of the same plaintiffs and the 2004 cynoSure Agreement, Defendant argues allowing this action to proceed here would result in duplicative discovery and possibly inconsistent results. Plaintiffs argue transfer to Florida would shake the systemic integrity and fairness because Stonebridge is an Ohio corporate citizen and the purported contract mandates arbitration in Ohio.

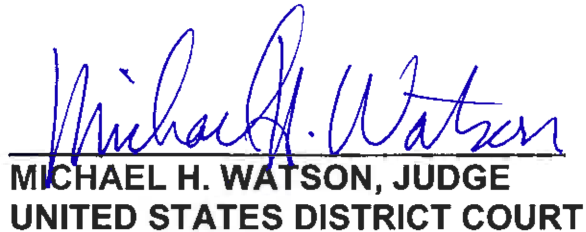
Although there are significant differences between the Florida case and this action, there are also substantial overlaps. In the Florida case, Plaintiffs are underwriters of a policy from 2006 and concede that they provided reinsurance for Stonebridge but dispute whether Stonebridge complied with that policy. In the case *sub judice*, Plaintiffs are purported underwriters of the 2004 policy but argue they never had knowledge of any such agreement. The Southern District of Florida has, however, implicated the 2004 cynoSure agreement in its most recent Order and ordered the parties before it to arbitrate all demands by Stonebridge for the period of March 1, 2004 and March 1, 2006. Therefore, there would be some overlap between discovery and the possibility for inconsistent rulings. Although the cases are not identical, transferring this case to the Southern District of Florida will save a substantial amount of judicial time and resources.

See Ltd. Serv. Corp. v. M/V APL Peru, 2:09–cv–1025, 2010 WL 2105362, at *5 (S.D. Ohio May 25, 2010).

The Court finds Plaintiffs' reliance on an arbitration clause they have not invoked in a contract it has not acknowledged disingenuous as best and will not further address that argument. Accordingly, the interests of justice also weigh in favor of transferring this case.

Because both the private and public interests weigh in favor of transfer to the Southern District of Florida, the Court **GRANTS** Defendant's motion to transfer, ECF No. 6, and finds Defendant's motion to dismiss moot, ECF No. 24. The Clerk shall transfer this case to the United States District Court for the Southern District of Florida, West Palm Beach Division.

IT IS SO ORDERED.



MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT