UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUNICH REINSURANCE AMERICA, INC.,

Plaintiff,

-v-

UTICA MUTUAL INSURANCE COMPANY,

Defendant.

13 Civ. 238 (KBF)

ORDER

KATHERINE B. FORREST, District Judge:

This case was recently transferred to the undersigned. On January 10, 2013, plaintiff Munich Reinsurance America, Inc. ("Munich"), filed this action against Utica Mutual Insurance Company ("Utica"), alleging breach of contract and related causes of action stemming from a 1977 reinsurance agreement between Munich and Utica. (Compl., ECF No. 1.) Utica made loss payments – billed through its offices in New Hartford, New York – to Munich in consideration of asbestos claims asserted against the primary insured. (Pl.'s Mem. of L. in Opp. to Def.'s Mot. to Transfer Venue ("Pl.'s Br.") at 2, ECF No. 14; Def.'s Mem. of L. in Suppt. of Mot. to Transfer Venue ("Def.'s Br.") at 2, ECF No. 10.) In this action, Munich disputes and seeks the return of various sums it paid Utica in connection with that billing.

Defendant has moved to transfer this case to the Northern District of New York. (ECF No. 9.) For the reasons set forth below, Utica's motion is granted.

Background

This action is the later-filed of two actions between these parties regarding reinsurance contracts. Utica – here the defendant – is plaintiff in the earlier-filed case, brought in January 2012 in the Northern District of New York. (Affirm. of Bruce M. Friedman Ex. 1, ECF No. 15.) That earlier case concerns a 1973 reinsurance agreement between the parties, in which facts of the instant case have been at issue during discovery and on pending motion for summary judgment. (Pl.'s Br. at 3; Def.'s Br. at 1.)

Discussion

Utica contends that transfer is appropriate because the witnesses in its case reside in the NDNY, the billing at issue took place in the NDNY, and the case already proceeding in the NDNY is related. Munich argues that the two cases relate to distinct contracts and that, as plaintiff here, it should be afforded its choice of forum in the SDNY. (Def.'s Br. at 3; Pl.'s Br. at 2-4.) The Court finds transfer is appropriate.

The Federal Rules of Civil Procedure provide that, "[f]or the convenience of parties and witnesses, and in the interest of justice, a district court may transfer any civil action to any other district where it might have been brought." 28 U.S.C. § 1404(a). "District courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness are considered on a case-by-case basis." D.H. Blair & Co. v. Gottdiener, 462 F.3d 95,

107 (2d Cir. 2006) (citing In re Cuyahoga Equip. Corp., 980 F.2d 110, 117 (2d Cir. 1992)).

The inquiry under § 1404 is two-fold: (1) whether the action could have been brought in transferee court; and (2) whether transfer is warranted for the convenience of the parties and witnesses and in the interest of justice. N.Y. Marine & Gen. Ins. Co. v. Lafarge N. Am., Inc., 599 F.3d 102, 112 (2d Cir. 2010).

If the transferee court would have jurisdiction, the Court takes up the second part of the inquiry, considering:

> (1) the plaintiff's choice of forum, (2) the convenience of witnesses, (3) the location of relevant documents and relative ease of access to sources of proof, (4) the convenience of parties, (5) the locus of operative facts, (6) the availability of process to compel the attendance of unwilling witnesses, and (7) the relative means of the parties.

Id. at 112 (citation omitted). Other factors to consider include the forum's familiarity with the governing law, trial efficiency, and the interests of justice based on a totality of the circumstances. See, e.g., Williams v. City of New York, No. 03-cv-5342, 2006 WL 399456, at *3 (S.D.N.Y. Feb. 21, 2006).

As an initial matter, it is undisputed that this action could have been brought in the Northern District of New York. As a New York corporation with its principal place of business in New York, defendant is subject to general personal jurisdiction in the NDNY. See N.Y. C.P.L.R. § 301; United Mobile Technologies, LLC v. Pegaso PCS, S.A. de C.V., No. 11–2813–CV, 2013 WL 335965 (2d Cir. Jan. 30, 2013) ("[G]eneral jurisdiction is established if the defendant is shown to have engaged in continuous, permanent, and substantial activity in New York.") (internal quotation marks omitted). That fact is all that is required for venue to be proper in the

NDNY. See 28 U.S.C. §§ 1391(b)(1)(setting forth residency of defendant as basis for venue), 1391(c)(2)(defining residency for corporation as, inter alia, any federal judicial district within a state where corporation's contacts are sufficient to subject it to personal jurisdiction within that district). (See also Def.'s Br. at 1, 11.)

The second § 1404 prong – the convenience of the parties and witnesses and the interests of justice – also weighs in favor of transfer.

First, though plaintiff chose the SDNY, the Court's deference to that choice is not absolute; rather, "the degree of deference to the plaintiff's forum depends in part on a number of considerations, such as the plaintiff's own connection to that forum." Gross v. British Broad. Corp., 386 F.3d 224, 230 (2d Cir. 2004). To wit, "[t]he plaintiff's choice [of forum] is entitled less deference . . . where the forum is not the plaintiff's home and the cause of action did not arise in the forum." Legrand v. City of New York, No. 09 Civ. 9670, 2010 WL 742584, at *2 (S.D.N.Y. Mar. 3, 2010).

Here, plaintiff concedes it neither is incorporated nor has its principal place of business in the SDNY. The 1977 contract at issue may have been transacted between Utica and Munich when Munich maintained a principal place of business in New York City, but Munich now resides in New Jersey. (Pl.'s Br. at 7.) The Court therefore need not defer to plaintiff's forum choice.

This conclusion is bolstered by the remaining convenience and justice factors. As to the second factor – the location of the witnesses – the only witnesses foreseen by either party reside either in the NDNY or in New Jersey.[1] Munich suggests that

[1] Utica suggests that all defense witnesses likely to be called in this case work in New Hartford, New York, in the Northern District. (Def.'s Br. at 10.)

it may not even call live witnesses at trial. (Pl.'s Br. at 5.) In addition, as to the third factor – the location of documents and access to sources of proof – Utica asserts that relevant documents exist at its headquarters in the NDNY, but Munich makes no similar assertion as regards the SDNY.

On balance, the fourth factor – the convenience of the parties -- also favors the NDNY. Munich contends the Southern District of New York is strongly preferable in part because of superior public transportation and that its New Jersey headquarters "is part of the New York metropolitan area." (Pl.'s Br. at 6.) However, as Utica points out, the driving distance between its headquarters and the Albany and Syracuse federal courthouses is roughly equivalent to the distance that Munich's personnel would have to travel to participate in the proceedings. That counsel for Munich is based in Manhattan is of no moment – it is not a party here.

Fifth, the locus of operative facts similarly favors a transfer. As noted above, Munich concedes that the operative conduct here consists of contracts negotiated and payments made from the parties' head offices. (Pl.'s Br. at 8.) Now that its headquarters has moved to New Jersey, Munich does not allege that any of the conduct at issue in this case has any geographic relevance to the SDNY.

The final two factors are largely irrelevant here – as both the NDNY and SDNY are in New York, the parties will have the same ability to compel the attendance of witnesses in either forum. Neither party – both of whom are sophisticated insurance companies – asserts it cannot afford to litigate in either

forum.[2] Although Munich suggests the Southern District has greater familiarity with the law of reinsurance (Pl.'s Br. at 9), the Northern District is no doubt also well equipped to apply the law in this matter.[3]

Beyond the convenience and justice factors, it is clear that a transfer serves the interests of efficiency as well. Although Munich denies that the case already pending in the Northern District between the parties is "related" to this one, it concedes that they may arise from "parallel insurance relationships" (Pl.'s Br. at 10) and acknowledges the possibility of "duplicative discovery." (Id. at 11.) Utica, in contrast, repeatedly asserts that the facts and legal issues of the two cases "significantly overlap." (Def.'s Br. at 1.) "[T]he existence of a related action in the transferee district is a strong factor to be weighed with regard to judicial economy." Williams v. City of New York, No. 03-cv-5342, 2006 WL 399456, at *3 (S.D.N.Y. Feb. 21, 2006). Thus, to the extent that the case pending in the NDNY involves witnesses or document production in common with this action, judicial economy is better served by hearing both cases there.

Therefore, for the reasons stated above, the Court finds that transfer of this action to the NDNY is appropriate. Defendant's motion for transfer of venue is GRANTED and it is hereby

ORDERED that this action be transferred to the Northern District of New York.

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[2] Munich admits as much, noting "both parties are substantial corporations which can well afford the transportation costs at issue." (Pl.'s Br. at 8.)

[3] Indeed, Munich cites four other asbestos-related Northern District cases Utica is litigating. (Pl.'s Br. at 12.)

The Clerk of Court is directed to transfer this action to the Northern District of New York.

SO ORDERED.

Dated: New York, New York
June 18, 2013

KATHERINE B. FORREST
United States District Judge