IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

R&Q REINSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 1:16-cv-4199
	)	Judge Zagel
THE AMERICAN INSURANCE COMPANY,	)	Magistrate Valdez
	)	
Defendant.	)	

R&Q Re's Response to TAIC's Transfer Motion

Introduction

Defendant The American Insurance Company ("American"), an Ohio corporation, recently revealed that in 2015, before Plaintiff R&Q Reinsurance Company ("R&Q Re") filed this suit, it moved its principal place of business from California to Chicago, Illinois. (Doc. 13, ¶ 5.) This means that the Eastern Division of the Northern District of Illinois is American's home forum. It also means that American's assertions that "Illinois has only an attenuated connection to this matter," and that "Illinois' *sole connection* to this dispute is the fact that the parties' respective Chicago, Illinois branch offices executed the [reinsurance contracts at issue]" (Doc. 16 at 1, 6 (emphasis added)) are untrue. So American's transfer request rests on the rather extraordinary – if not wholly implausible – claim that it would be unduly inconvenient for American to litigate this action at home.

American's primary basis for its dubious claim is that the personnel handling its reinsurance collections and their files are in California. But in the motion to transfer context the convenience of a party's agents or employees, *i.e.*, witnesses it

controls, is of absolutely no relevance. Only the convenience of non-party witnesses counts. None of the non-party witnesses American identifies are located in California, but all are located east of the Mississippi River, in Michigan, Connecticut and Washington, D.C. And R&Q Re has identified eleven potential non-party witnesses with office locations in Chicago and Detroit. What's more, now that the electronic data storage and management age is upon us, and inasmuch as Chicago is American's principal place of business and home to its executive management and key decision-making personnel – who most assuredly have full, unfettered and instant electronic access to all company records – American cannot credibly dispute that all relevant documents and data are as much present in the Northern District of Illinois as they are in the Northern District of California.

Another problem with American's motion is that it fails to make the required showing that American is amenable to personal jurisdiction in California such that the action "might have been brought" there. As an Ohio corporation with its principal place of business in Chicago, American is not subject to California's general jurisdiction; and American makes no attempt to show that California could exercise specific jurisdiction over it to adjudicate the claims R&Q Re raises here.

For the reasons noted and those discussed below, American's motion to transfer should be denied.

Argument

A district court's authority to transfer a civil action comes from 28 U.S.C. § 1404(a), which states 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 or to any district or division to which all parties have consented." To prevail on its transfer motion, American has the burden of showing each of the following: (1) venue was proper in the transferor district; (2) venue and jurisdiction would be proper in the transferee district; and (3) transfer will serve the convenience of the parties and the witnesses as well as the interests of justice. *Coffey v. Van Dorn Iron Works*, 796 F.2d 217, 219 (7th Cir. 1986). American has not and cannot satisfy the latter two prongs of the analysis.

1. American has not shown that the action might have been brought in the Northern District of California.

At the outset, a party moving under § 1404(a) must establish that the action "might have been brought" in the proposed transferee district. *ESCO Corp. v. Cashman Equip. Co.*, 65 F.Supp.3d 626, 630 (C.D. Ill. 2014). Here, then, American must show that the Northern District of California may exercise personal jurisdiction over it to adjudicate R&Q Re's claims. *Coffey*, 796 F.2d at 219. Personal jurisdiction takes two forms: general or all-purpose jurisdiction and specific or case-linked jurisdiction. *Daimler AG v. Bauman*, ___U.S. ___, 134 S.Ct. 746 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S.Ct. 2846 (2011); J. *McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 131 S.Ct. 2780 (2011). American is not amenable to general jurisdiction in California and it has not shown that it would be subject to specific jurisdiction there on R&Q Re's claims.

American is an Ohio corporation with its principal place in Illinois (Doc. 13, ¶ 5; Doc. 16-2 at 7, ¶ 4.), making it a "foreign defendant" vis-à-vis California for

jurisdictional purposes. Due process "sets the outer boundaries of a state tribunal's authority to proceed against a [foreign] defendant," *Goodyear* 131 S.Ct. at 2854. It permits "[a] court [to] assert general jurisdiction over foreign (sister-state or foreign-country) corporations … when their affiliations with the State … render them *essentially at home in the forum State*." *Goodyear,* 131 S.Ct. at 2851 (emphasis added). A corporation is "essentially at home" in the forum in which it is incorporated and in which it has its principal place of business. *Daimler*, 134 S.Ct. at 761-62; *see also id*. n. 19 (same).[1] American is "at home" and amenable to general jurisdiction in Ohio (state of incorporation) and Illinois (principal place of business), but not California.

For an exercise of specific jurisdiction to be constitutional, the foreign defendant's in-state activities (1) must be "continuous and systematic," and (2) *must give rise to the claim sued on*. *See, e.g*., *Goodyear,* 131 S.Ct. at 2851, *id*. at 2853, *citing International Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945); *see also J. McIntyre Machinery,* 131 S.Ct. at 2788 ("activity directed at a [state] may justify specific jurisdiction 'in a suit arising out of or related to the defendant's contacts with the forum,'" *quoting Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414, n. 8 (1984)). American has not established the second proposition.

[1]As the *Daimler* Court explained:

> [O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home. With respect to a corporation, the place of incorporation and principal place of business are paradigm bases for general jurisdiction. Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

Id., 134 S.Ct. at 760 (internal citations and punctuation omitted).

Indeed, the record so far developed in this case shows that the events giving rise to the parties' dispute transpired in several jurisdictions across the country. First, American admits – albeit in rather convoluted or obfuscated language – that Chicago is its principal place of business and home to its executive management and key decision-making personnel. (Doc. 13, ¶ 5.) Second, it also admits that "a substantial part of the events and alleged omissions giving rise to [R&Q Re's] claims arose in [the Northern] District [of Illinois]." (*Ibid*., ¶ 3.[2]) Third, American concedes that this action arises, at least in part, from "[its] settlement of claims alleged by [General Motors ("GM")] against [American in Superior Court of Delaware] for insurance coverage under certain policies of excess liability insurance issued by [it] to GM, which are encompassed in the lawsuit entitled, *Motors Liquidation Company DIP Lenders Trust v. Allianz Insurance Company, et al*., C.A. No. N1C-12-022, (the "GM Coverage Claims") …." (Doc. 16 at 2.) So according to American's own submissions, this dispute arises out of events that transpired in at least three states, California, Delaware and Illinois. And inasmuch as GM is headquartered in Michigan and R&Q Re is incorporated and headquartered in Pennsylvania, the number of states in which events precipitating this action occurred swells to five. Thus, while the Billeter "affidavit" makes claims about

[2] Rule 8(b)(1)(B), Fed. R. Civ. Proc., requires the answering party to "admit or deny the allegations asserted against." "An allegation—other than one relating to the amount of damages—is admitted … [if] … not denied." *Id*. Rule 8(b)(6). American admits R&Q Re's allegation that "… a substantial part of the events and alleged omissions giving rise to the claims arose in this District" by failing to deny it. (Doc. 13, ¶ 3.)

activities in California (*see* Doc. 16-1[3]), the present record precludes a finding that American has met it burden of showing that R&Q Re's claims arise out of American's California activities, even assuming *arguendo* they are "continuous and systematic." In other words, because it's not clear where the action arose, American has failed to meet its burden to show that the action "might have been brought" in the Northern District of California.

2. The convenience of non-party witnesses weighs strongly against transfer.

American's discussion of the convenience of the parties and witnesses primarily focuses on the location of its agents and employees likely to be called as witnesses. (Doc. 16 8-9.) But the convenience of witnesses within a party's control is of no importance; the convenience of non-party witnesses, on the other hand, is of paramount importance. *Int'l Truck & Engine Corp. v. Dow-Hammond Trucks Co.,* 221 F.Supp.2d 898, 904 (N.D.Ill.2002) ("Because these witnesses are within plaintiffs' control however, the court is not persuaded that the convenience of these witnesses favors the plaintiffs."); *Confederation Des Brasseries De Belgique v. Coors Brewing Co.,* No. 99 C 7526, 2000 WL 88847, *5 (N.D. Ill. Jan. 20, 2000) ("The location of the parties' executives and employees is irrelevant on the issue of witness convenience. It is presumed that a party's employees will appear as witnesses voluntarily."). American identifies non-party witnesses located in Michigan, Connecticut, and Washington, D.C., but none in California. (Doc. 16 at 9.) R&Q Re's files relevant to the dispute identify no less than eleven potential non-

[3] Doc. 16-1 is not an affidavit; and while it resembles an "unsworn declaration," it does not fully comply with the requirements applicable to such an instrument. *See* 28 U.S.C. § 1746. Accordingly, the court may disregard it. *Davis v. Solid Waste Services, Inc.*, 20 F.Supp.3d 519 (E. D. Pa. 2014). aff'd 625 Fed.Apx. 104 (2nd Cir. 2015).

party witnesses. (Aff. of Christopher B. Maits, ¶ 8, attached as Ex. 1.) Five of them had offices located in Chicago and the other 6 had offices located in the Detroit metropolitan area. (*Ibid*.) Three of the additional non-party witnesses worked for Alexander & Alexander, one of the brokers involved with placing the reinsurance certificates at issue; Alexander & Alexander was later purchased by AON, which is headquarted in Chicago. (*Ibid*.) It would be far more convenient for the potential non-party witnesses the parties have identified to travel to Chicago than to Northern California.

Having its principal place of business in Chicago also undercuts American's claim of unfair inconvenience and weighs against transfer. *Peterson v. U.S. Steel Corp*., 624 F.Supp. 44, 45 (N.D. Ill. 1985) ("Given the close proximity of the defendants to this court, it is difficult to find that they would be unduly inconvenienced by the action proceeding in this district."). It also exposes the mendacity of American's assertions that "Illinois has only an *attenuated connection* to this matter," and that "Illinois' *sole connection* to this dispute is the fact that the parties' respective Chicago, Illinois branch offices executed the [reinsurance contracts at issue]" (Doc. 16 at 1, 6 (emphasis added).)[4]

The convenience of the parties and the non-party witnesses weighs strongly against transfer.

[4] American accuses R&Q Re of "forum shopping," and argues that its forum choice should therefore be accorded no deference. (Doc. 16 at 5) As baseless as it is distasteful, American's accusation merits no response except to note that "the weight which the court accords plaintiff's choice of forum should not be confused with defendant's substantial burden of showing that litigation in the proposed transferee district court would eliminate inconvenience and better serve the interest of justice." *Peterson*, 624 F.Supp. at 45. The fact R&Q Re's chosen forum is American's home forum only adds to the "substantial burden" it already faces.

3. American's records are as much present in Illinois as they are in California.

Exhibits to American's motion include e-mail correspondence from one of its finance specialists to R&Q Re and other reinsurance carriers providing information, documents and data relating to and supporting American's ceded reinsurance claims under the various policies they issued. (Doc. 16-2 at 13-18.) Attached to the emails are electronic versions of policy forms and documents, pleadings, charts, records, reports and spreadsheets. (*Ibid.*) Additionally, from the time American first gave R&Q Re notice of its claim, and for more than 2-years thereafter, R&Q Re "received all written communications and related documents from American electronically." (Ex. 1, ¶ 4.) When, in October 2015, R&Q Re representatives visited American's reinsurance claims and collections operation in California to review and obtain information from, *inter alia*, American's underwriting file, they were provided access to electronic as well as paper files. (*Ibid.* ¶¶ 5-6.) American later sent to R&Q Re copies of materials requested during the review as e-mail attachments and as electronic images stored on a CD. (*Ibid.* ¶ 7.)

American stores, maintains, manages, transmits, distributes and shares its business documents and data electronically externally, and no doubt internally. And it is reasonable to infer that American's Chicago-based executive management and administrative personnel have the same unfettered access to documents and data generated or maintained by the company's California operations as if they were physically present in California. In other words, American's documents and data are as much present in Illinois as they are in California.

4. Material events occurred in jurisdictions other than the Northern District of California.

As shown above, American concedes this action arises out of events that transpired in at least three, and possibly 5 different states. And it is undisputed that the reinsurance policies at issue were formed in Illinois. (Doc. 15 at 6.) The fact material events occurred in multiple jurisdictions weighs against transfer.

5. Illinois has a strong interest in resolving a dispute involving one of its corporate citizens and breach of Illinois contracts.

American admits that Illinois has an interest in the case, but argues that California has a stronger one. (Doc. 16 11-12.) A court ruling on a § 1404(a) motion "must look to the state of the world at the time of filing." *ESCO Corp*., 65 F.Supp.3d at 630. So notwithstanding American's protestations to the contrary, Illinois has a strong connection to the case because it is American's home and involves the alleged breach of Illinois contracts.

6. Choice-of-law and time-to-trial considerations are at best neutral.

As American points out, Illinois employs the most-significant-contacts test when making choice-of-law determinations. Four of the tests' five elements favor Illinois because it is (1) the place of negotiation and (2) contracting and (3) American's domicile and (4) the place of performance (*i.e.*, place of payment under the reinsurance certificates). The remaining factor is neutral because neither Illinois nor California has been shown to be (5) the location of the subject matter of the contracts. On balance, the scale tips towards Illinois.

Statistically, time-to-trial appears to favor transfer. But ultimately, the court and the parties will determine the rate at which the litigation progresses. Under the circumstances, if this factor favors transfer at all, it does so only minimally.

Conclusion

For the foregoing reasons, Plaintiff R&Q Reinsurance Company ("R&Q Re") prays that Defendant The American Insurance Company's motion to transfer be denied.

Respectfully submitted,

SEGAL McCAMBRIDGE SINGER & MAHONEY, LTD.

By: /s/ *Lawrence D. Mason*
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CERTIFICATE OF SERVICE

I, Lawrence D. Mason, do hereby certify that on June 28, 2016, I electronically filed the following pleading with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record:

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/s/ Lawrence D. Mason