

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

R&Q REINSURANCE COMPANY,

Plaintiff,

v.

THE AMERICAN INSURANCE COMPANY,

Defendant.

Case No. 1:16-cv-4199

**DEFENDANT THE AMERICAN INSURANCE COMPANY'S REPLY BRIEF IN
SUPPORT OF MOTION TO TRANSFER PURSUANT TO 28 U.S.C. § 1404(a)**

Plaintiff R&Q Reinsurance Company ("R&Q Re") rushed to file this action in Illinois in an act of blatant forum-shopping, using resources of this Court without a proper connection to the venue. This dispute's *only* connections to Illinois are that the reinsurance contracts at issue were signed in Illinois in the 1970s and that in 2015, Defendant The American Insurance Company's ("TAIC") moved its administrative and board functions to Illinois. Conversely, the Northern District of California is the situs of the alleged breach of contract, the location of TAIC's claims handling and reinsurance functions for more than 50 years, the location of the majority of key material witnesses, and the location of substantial evidence. Accordingly, since the claim arose in California, the Court should transfer this matter to the Northern District of California pursuant to 28 U.S.C. § 1404(a). On balance, both the convenience and interest of justice factors of Section 1404(a) weigh substantially in favor of transferring this action to the Northern District of California. As R&Q Re's response presents nothing to persuade a contrary finding, TAIC respectfully requests that the Court grant its Motion to Transfer Pursuant to 28 U.S.C. § 1404(a) ("Motion to Transfer") (*See* CM/ECF Doc. No. 15).

ARGUMENT

As set out in TAIC's moving brief, the Court may properly transfer venue to a different judicial district where: "(1) venue is proper in both the transferor and transferee court; (2) transfer is for the convenience of the parties and witnesses; and (3) transfer is in the interest of justice." *Clear Lam Packaging, Inc. v. Rock-Tenn Co.*, No. 02 C 7491, 2003 WL 22012203, at *3 (N.D. Ill. Aug. 22, 2003); *Simonian v. Hunter Fan Co.*, 10 C 02771, 2010 U.S. Dist. LEXIS 107766, at *5 (N.D. Ill. Oct. 7, 2010). Plaintiff's opposition brief challenges all three elements of the above test but fails in each instance to rebut the strong merits favoring transfer of this case to the Northern District of California.

A. The Northern District Of California Clearly Has Jurisdiction Over This Dispute And Is An Appropriate Venue Because The Claim Arose There.

Plaintiff first challenges the authority of the Northern District of California to even hear this dispute, claiming that such Court lacks specific personal jurisdiction. In making this argument, Plaintiff contends that TAIC fails to satisfy the second prong of the test for specific jurisdiction, *i.e.*, that the foreign defendant's in-state activities (1) must be "continuous and systematic," and (2) must give rise to the claim sued on. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (U.S. 2011). The facts in the record before the Court, however, directly contradict this argument.

All facts in the record show that TAIC's contacts with California are continuous and systematic and gave rise to this claim. All operations pertaining to the GM Coverage Claims and the Reinsurance Claim have been managed out of TAIC's and SF Re's California offices. (*See*

Amended Affidavit of Eric Billeter (“Billeter Aff.”)¹, at ¶¶ 6 and 8.) All decisions related to notice of the GM Coverage Claims provided by TAIC to R&Q Re were made by personnel who managed the GM Coverage Claims from TAIC’s California offices. (*Id.* at ¶¶ 6 and 10).

Similarly, all demands for payment by TAIC to R&Q under the R&Q Re Contracts originated from TAIC’s California offices. (*Id.*) These facts wholly contradict any assertion that the Northern District of California lacks the ability to properly exercise specific personal jurisdiction or venue over this dispute. These facts undoubtedly prove both that the Northern District of California has personal jurisdiction over this dispute and that venue is appropriate there. *Goodyear, supra*, 131 S. Ct. 2846; *see* 28 U.S.C. § 1391(b)(2); *and see* TAIC’s Memorandum of Law in support of Motion to Transfer, Section A(2).

Moreover, the facts emphasized by R&Q Re -- that the underlying GM claims were venued in Delaware and that TAIC moved its administrative and board functions to Illinois in 2015 -- have no bearing on the central issue of the alleged late notice provided by TAIC (from its California offices). Thus, the facts highlighted by R&Q do not in any way militate against granting the instant motion to transfer. Indeed, these facts are immaterial to the central issue of where the alleged non-performance occurred--the Northern District of California. *See* 28 U.S.C. § 1391(b)(2).

B. The Convenience Factor Of Section 1404 Weigh In Favor Of Transfer.

In its opposition brief, R&Q Re also argues that the private interest factors considered under Section 1404’s convenience prong favor Illinois over California based on party, witness, and document locations. These arguments are legally and factually without merit.

1. The Location Of AIC’s Administrative And Board Functions Is Immaterial To The Convenient Venue Analysis.

¹ TAIC relies on the corrected Affidavit of Eric Billeter filed as Exhibit 1 to TAIC’s Unopposed Motion for Leave to File a Corrected Affidavit. (*See* CM/ECF No. 23 at Exhibit 1.)

R&Q Re's opposition brief makes much of the fact that TAIC moved its administrative and board function to its parent company's Chicago headquarters in 2015. This fact, however, is wholly immaterial to the convenient venue analysis. Indeed, R&Q's entire argument on this point attempts to create a private interest factor that does not exist in analyzing the convenience prong of Section 1404.² This form-over-substance approach runs contrary to the goals of Section 1404, that is, to prevent a "waste of time, energy, and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense of an improper and inconvenient venue." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964).

Importantly, the test used to determine a corporation's citizenship for diversity jurisdiction purposes under 28 U.S.C. § 1332(c) does not govern venue determinations under 28 U.S.C. § 1391. Indeed, whereas the Court must apply the "nerve center" test to identify a corporation's principal place of business for diversity jurisdiction purposes under Section 1332(c),³ venue may properly lie under Section 1391(b) "in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). Thus, even though TAIC may be deemed a "citizen" of Illinois for diversity jurisdiction purposes since moving its administrative and board functions to the State in 2015, venue still properly lies in the Northern District of California pursuant to 28 U.S.C. §1391(b)(2) since a "substantial part of the events or omissions giving rise to the claim" occurred in that district. (*See Billeter Aff* at ¶¶ 6-10.)

Here, not only does venue properly lie in the Northern District of California pursuant to

² In analyzing the convenience factors under Section 1404(a), courts consider four private interest factors: (1) the plaintiff's choice of forum; (2) the situs of material events; (3) the relative ease of access to sources of proof; and, most importantly, (4) the convenience to the witnesses and parties. *Simonian v. Hunter Fan Co.*, 2010 U.S. Dist. LEXIS 107766, at *5-6 (N.D. Ill. Oct. 7, 2010); *Clear Channel Outdoor, Inc. v. Rubloff Oakridge Algonquin*, 2003 U.S. Dist. LEXIS 18422, at *10 (N.D. Ill. Oct. 16, 2003).

³ *See Hertz Corp. v. Friend*, 559 U.S. 77, 81 (2010) (holding that for diversity jurisdiction purposes under Section 1332, the phrase "principal place of business" means the corporation's "nerve center," or "the place where the corporation's high level officers direct, control, and coordinate the corporation's activities").

Section 1391(b), but the private interest factors considered under the convenience prong of Section 1404 weigh in favor of transfer to that District. Indeed, for purposes of applying the private interest factors, the situs of the alleged breach of contract and the location of key witnesses and evidence -- and not the legal state of residence of the Parties -- holds paramount importance. *See Chicago, R. I. & P. R. Co. v Igoe*, 220 F.2d 299 (7th Cir. 1955) (holding that it was an abuse of the District Court's discretion to deny defendant's motion to transfer where all of the material witnesses resided and the accident occurred in Iowa. This was notwithstanding the fact that defendant maintained its corporate headquarters in Chicago, Illinois.); *and see, Cambridge Filter Corp. v International Filter Co.*, 548 F. Supp. 1308, 1311 (D. Nev. 1982) (granting motion to transfer venue of case from the District of Nevada to the Northern District of California where the party seeking the transfer was incorporated in Nevada and where no material witnesses resided in Nevada. Regarding defendant's Nevada residency, the court stated: "The facts that Nevada is Plaintiff's choice of forum and Defendant's state of incorporation, standing alone, do not satisfy the criteria of § 1404(a).") In this regard, Plaintiff's silence on the Court's holding in *Chicago, R. I. & P. R. Co.*, which is cited in TAIC's motion brief, speaks volumes.

Moreover, while Plaintiff makes much of TAIC's administrative and board relocation, Plaintiff conveniently disregards that TAIC's claim handling and reinsurance functions have been located the Northern District of California for more than 50 years, which likely explains why Plaintiff pled in its Complaint: ". . . American is a corporation organized and existing under the laws of Ohio with its principal place of business in Novato, California." (*See* Complaint, CM/ECF Doc. No. 1 at ¶ 5.) Also, R&Q Re's statement that TAIC's "key decision-making personnel" are located in Illinois and insinuation that TAIC is in "close proximity to the [Illinois]

Court” are overreaching and unsupported. (See Response Brief, CM/ECF Doc. No. 22 at p. 7.) As TAIC has affirmed, and as R&Q Re well knows by its audit of TAIC’s California offices, all “key decision-making personnel” relevant to this lawsuit are located in Petaluma, California.

2. The Key Witnesses To This Alleged Breach Of Contract Claim Are Located In Either In California Or Outside Of Illinois, Which Favors Transfer.

Contrary to R&Q Re’s assertion, the “convenience of the parties” is most certainly a factor in deciding a motion to transfer venue transfers under 28 U.S.C. Section 1404(a) (transfer is appropriate when “[f]or the convenience of the parties and witnesses”) (emphasis added). Requiring TAIC to incur burden, expense, and business disruption of commuting five percipient witnesses to this dispute from California to Illinois is unreasonable in light of the fact that the alleged breach occurred in California. R&Q Re does not deny that the five TAIC witnesses identified in TAIC’s motion are key material witnesses. In fact, there are very few, if any, third party witnesses who will have relevant knowledge of the alleged breach of reinsurance contract, and none of these potential witnesses reside in Illinois. (See Vales Decl., CM/ECF Doc. No. 23, Exhibit 1 at ¶¶ 3-7.) With a lack of third party witnesses to consider, the convenience of TAIC and the five key TAIC witnesses identified should weigh heavily in favor of transferring the litigation to California.

None of the nonparty witnesses identified by R&Q Re in the Affidavit of Christopher Maits (“Maits Affidavit”) (CM/ECF Doc. No. 22 at Exhibit 1), which include personnel who placed the reinsurance contracts in the 1970s, appear to possess relevant information regarding the alleged breach of contracts at issue and should be disregarded.⁴ “In determining whether a particular venue is more convenient to witnesses, a court should not limit its investigation to a

⁴ R&Q identifies these nonparty witnesses but does not identify what knowledge, if any, these individuals have regarding the alleged breach of contracts at issue.

review of which party can produce the longer witness list. Rather, a court should look to the nature and quality of the witnesses' testimony with respect to the issues in the case." *Vandeveld v. Christoph*, 877 F. Supp. 1160, 1168, 1995 U.S. Dist. LEXIS 7035, *20 (N.D. Ill. 1995); *Weller v. Calvin Gilmore Productions*, 1995 U.S. Dist. LEXIS 8769, *5, 1995 WL 382471 (N.D. Ill. June 19, 1995) ("Relevant factors in considering convenience include not only the number of witnesses located in each district, but also the nature and indispensability of witnesses' testimony..."). Here, there is no dispute that the relevant TAIC witnesses reside and/or work in California. Moreover, while R&Q Re identifies various nonparty witnesses in the Maits Affidavit, it fails to show that any of these witnesses both currently reside in Illinois and have knowledge of facts relevant to this dispute. Thus, on balance, based on the record before the Court, the location of the key witnesses militates in favor of the California forum.

3. All Key Documents, Many Of Which Are In Hard Copy Storage, Are Located In California.

Plaintiff also overreaches in its inferences regarding the interworkings of TAIC's document retention and management system. The documents identified in TAIC's motion are maintained in California either at TAIC or SF Re's offices or at off-site facilities located in California. Any documents produced in this case would be retrieved by California personnel from California systems, which is what occurred during R&Q Re's audit at TAIC's Petaluma, California offices. R&Q Re's speculations about TAIC's interworkings are inaccurate, unsupported, and should be disregarded.

In sum, each of the private interest factors either favor transfer to the Northern District of California or are at best neutral, and none favor litigating this dispute in Illinois.⁵

⁵ Plaintiff does not dispute that the remaining private interest factor--plaintiff's choice of forum--is neutral, as Illinois is not plaintiff's "home" district and thus its venue choice should be afforded no deference. *See*, TAIC's Memorandum of Law in support of Motion to Transfer, Section A(1).

C. The Interest of Justice Factor Militates In Favor Of Transfer.

Plaintiff's arguments on the interest of justice factor are without merit. The Northern District of California has every interest in litigating a matter involving the California operations of TAIC when the gravamen of the claim arose in the Northern District of California. *See e.g. Conseco Life Ins.*, 2001 U.S. Dist. LEXIS at *14 (transfer appropriate, because Texas has a strong interest in adjudicating a dispute in which documents and witnesses are located in Texas); *and see* TAIC's Memorandum of Law in support of Motion to Transfer, Section C(3). Conversely, Illinois has no connection to this case except as the location of contracts signed 40 years ago and as the location of TAIC's administrative and board functions since 2015. Accordingly, this factor weighs in favor of transfer.

CONCLUSION

This case is a California dispute, involving allegations of breach of contracts that occurred in California. R&Q Re's blatant forum shopping in Illinois, when neither it nor its claim have a legitimate connection to Illinois, should not be tolerated. WHEREFORE, TAIC respectfully requests that this Court: (a) transfer this action to the Northern District of California pursuant to 28 U.S.C. Section 1404(a), for the convenience of the parties and witnesses, and in the interest of justice; and (b) grant such other and further relief as the Court deems just and proper.

DATED: July 5, 2016

Respectfully submitted,
DENTONS US LLP

By: /s/ Geoffrey J. Repo
One of the Attorneys for
The American Insurance Company

Geoffrey J. Repo
ARDC #6270488
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
Ph: (312) 876-7370
Fax: (312) 876-3144
geoffrey.repo@dentons.com

and

John R. Vales (*pro hac vice*)
DENTONS US LLP
101 JFK Parkway
Short Hills, NJ 07078-2708
Ph: (973) 912-7100
Fax: (973) 912-7100
john.vales@dentons.com

CERTIFICATE OF SERVICE

The American Insurance Company hereby certifies that a copy of the above and foregoing was filed electronically to the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, this 5th day of June, 2016, using the CM/ECF system, which sent email notification of that filing to all parties listed below:

Lawrence D. Mason
SEGAL McCAMBRIDGE SINGER
& MAHONEY, LTD.
233 S. Wacker Drive, Suite 5500
Chicago, IL 60606
Ph: (312) 645-7800
Fax: (312) 645-7711
lmason@smsm.com

/s/ Geoffrey J. Repo
One of the Attorneys for
The American Insurance Company

100275614\V-7