

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

GUARDIAN INSURANCE COMPANY,)
)
 Plaintiff,)
)
 v.) CIVIL NO. 1996-180
)
)
 BAIN HOGG INTERNATIONAL LIMITED)
 and EAGLE STAR REINSURANCE COMPANY)
 LIMITED,)
)
 Defendants.)
 _____)

APPEARANCES:

Adam G. Christian, Esq.
Hodge & Francois
1340 Taarneberg
St. Thomas, V.I. 00802
Attorney for Plaintiff

Sharmane Brathwaite-Davis, Esq.
Hymes & Zebedee
No. 10 Norre Gade, 3rd Floor
P.O. Box 990
St. Thomas, V.I. 00804
Attorney for Defendant Eagle Star Reinsurance Company Limited

MEMORANDUM OPINION

Finch, C. J.

Presently before the Court is Plaintiff Guardian Insurance Co.'s ("Guardian") Motion in Support of Personal Jurisdiction over Defendant Eagle Star Reinsurance Co. ("Eagle Star").¹ For

¹ The Court is treating Guardian's motion as a motion for reconsideration of the Court's May 8, 1997 Memorandum Opinion and Order dismissing Guardian's claims against Eagle Star.

the reasons expressed below, the Court finds that it may exercise in personam jurisdiction over Defendant Eagle Star. Accordingly, the Court will vacate that portion of its May 8, 1997 Memorandum Opinion and Order dismissing Guardian's claims against Eagle Star.

I. Background

Guardian is a Virgin Islands insurer. Defendant Bain Hogg International Ltd. ("HIB")² is a British reinsurance broker engaged in obtaining reinsurance on behalf of insurers for risks exceeding the financial level manageable by primary insurers. Defendant Eagle Star is a reinsurer whose primary place of business is London, England. In early 1993, Guardian and HIB entered into an oral agreement by which HIB was to serve as Guardian's reinsurance broker. Pursuant to this agreement, in December 1993, HIB issued to Guardian and its Puerto Rico-based affiliate, Heritage Insurance Co. Ltd. ("Heritage"), a Cover Note. This Cover Note confirmed that HIB had placed reinsurance coverage with Eagle Star under a First Surplus Property Treaty (the "Treaty") covering risks insured by Guardian within the U.S. Virgin Islands and by Heritage within the British Virgin Islands and the Lesser Antilles.

According to Eagle Star, it issued a provisional notice of cancellation of the reinsurance policy on September 20, 1993. Guardian disputes ever receiving the notice. HIB forwarded Guardian a Cover Note on December 29, 1993, together with a letter advising Guardian that the Treaty was for the period January 1, 1993 to December 31, 1993. Guardian made no cessions under the Cover Note until 1995, following Hurricane Marilyn. At that time, Guardian attempted

² Defendant asserts, and Plaintiff does not contest, that HIB Ltd. and not Bain Hogg International Ltd. is the proper name for the party to this action. Therefore, Defendant shall be referred to as HIB.

to cede risks to Eagle Star by filing with HIB a series of statements and a check for premiums due Eagle Star. HIB accepted the statements and deposited the check. However, HIB subsequently sought to refund the premiums and informed Guardian that the Treaty had been canceled effective December 31, 1993.

On September 3, 1996, Guardian filed the instant action against both HIB and Eagle Star, alleging breach of contract, breach of fiduciary duty and bad faith.³ Subsequently, HIB and Eagle Star filed motions to dismiss claiming that this Court lacked personal jurisdiction over both Defendants. On May 8, 1997, the Court granted Eagle Star's Motion to Dismiss,⁴ reasoning that jurisdiction could not be maintained over Eagle Star without violating the Due Process Clause of the Fourteenth Amendment.⁵ However, the Court subsequently, by Order dated November 24,

³ Shortly after Guardian filed the instant suit, HIB filed a separate action in the Queens Division, Commercial Court of London, seeking declaratory judgment that HIB was not liable to Guardian for breach of any duty. On April 27, 1997, the Commercial Court conducted a trial on the issue. Although Guardian chose not to participate in the trial, the English Court reviewed the evidence before it and granted judgment in favor of HIB. On June 9, 1999, this Court held that the doctrine of res judicata barred Guardian from pursuing its claims for breach of contract and breach of fiduciary duty against HIB, because those claims are identical to those decided by the English Court.

⁴ In the May 8, 1997 Memorandum Opinion, the Court also considered HIB's Motion to Dismiss. The Court denied HIB's motion, holding that although Guardian's showing of the relevant "minimum contacts" fell below the preponderance of evidence burden a plaintiff must meet at trial, those contacts were sufficient to survive a pretrial motion. Guardian Ins. v. Bain Hogg Int'l Ltd., Civ. No. 1996-180, Mem. Op. at 15 (D.V.I. May 8, 1997).

⁵ In Guardian's first motion in support of personal jurisdiction over Eagle Star, the only relevant evidence Guardian offered was the affidavit of Nigel Twohey, a former broker with HIB. Although Mr. Twohey's affidavit explained that Eagle Star had some presence in the Territory, this Court found that Twohey's testimony lacked "the particulars necessary to demonstrate that Eagle Star's contacts with the Territory were anything more than 'random' or 'attenuated'." Guardian Ins. v. Bain Hogg Int'l Ltd., Civ. No. 1996-180, Mem. Op. at 20 (D.V.I. May 8, 1997)

1997, stayed the decision to dismiss so as to permit Guardian an opportunity to conduct discovery on the jurisdictional issue. Having conducted this additional discovery, Guardian now submits the present motion in support of personal jurisdiction over Defendant Eagle Star.

II. Analysis

A. Legal Standard

When a federal court sits in diversity, its exercise of personal jurisdiction over a non-resident defendant must comport with the long-arm statute of the forum and with the Due Process Clause of the United States Constitution. In re Tutu Wells, 846 F. Supp. 1243, 1264 (D.V.I. 1993); Carson v. Skandia Ins. Co., Ltd., 19 V.I. 138, 146 (D.V.I. 1982); see also Alpine View Co. Ltd. v. Atlas Copco AB, 205 F.3d 208, 214 (5th Cir. 2000) (citing Fed. R. Civ. P. 4(e)(1), 4(h)(1), 4(k)(1)). Plaintiff bears the burden of establishing personal jurisdiction over Defendant. Carteret Sav. Bank v. Shushan, 954 F.2d 141, 146 (3d Cir.), cert. denied, 506 U.S. 817 (1992); see also North Penn Gas Co. v. Corning Natural Gas Corp., 897 F.2d 687, 689 (3d Cir.) (“Once a defendant has properly raised a jurisdictional defense, the plaintiff must demonstrate sufficient contacts with the forum state to establish in personam jurisdiction.”), cert. denied, 498 U.S. 847 (1990). Although Plaintiff must make this showing at trial by a preponderance of the evidence, at this point in pretrial motions, Plaintiff is only required to establish a prima facie case. Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A., 51 F.3d 1383, 1387 (8th Cir. 1995). In assessing whether Plaintiff has made such a case, the Court must consider all allegations of jurisdictional facts in a light favorable to an assertion of in personam jurisdiction. In

(quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

re Tutu Wells, 846 F. Supp. 1243, 1264 (D.V.I. 1993); see also LaRose v. Sponco Mfg. Inc., 712 F. Supp. 455, 458 (D. N.J. 1989) (holding that factual discrepancies in affidavits should be resolved in the burdened party's favor). With this standard in mind, the Court now turns to the governing substantive law.

1. Virgin Islands Long-Arm Statute

The Virgin Islands long-arm statute, 5 V.I.C. § 4903, provides:

- (a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's
 - (1) transacting any business in this territory;
 - (2) contracting to supply services or things in this territory;
 - (3) causing tortious injury by an act or omission in this territory;
 - (4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
 - (5) having an interest in, using, or possessing real property in this territory; or
 - (6) contracting to insure any person, property, or risk located within this territory at the time of contracting.
 - (7) causing a woman to conceive a child, or conceiving or giving birth to a child; or
 - (8) abandoning a minor in this Territory.
- (b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

5 V.I.C. § 4903 (1997).

For purposes of subsection (a)(1) of the Virgin Islands long-arm statute, the term “transacting business,” “can be only a single act which in fact amounts to the transaction of business within a state (or territory).” Godfrey v. International Moving Consultants, Inc., 18 V.I. 60, 66-67 (D.V.I. 1980) (citation omitted). Thus, it is enough that there is a contract with a Virgin Islands resident and the object of that contract is to be performed, even if only in part, in

the Virgin Islands. In the instant case, Eagle Star admits that there was an insurance contract wherein it was obligated to provide reinsurance to Guardian. Payment under the reinsurance treaty would, of course, be made in the Virgin Islands. Accordingly, the Court finds that jurisdiction is proper under § 4903(a)(1). Further, because Eagle Star contracts to insure property located within the Virgin Islands, jurisdiction is also proper under 5 V.I.C. § 4903(a)(6). Having concluded that jurisdiction is appropriate under the Virgin Islands long-arm statute, the Court next considers whether the assertion of such jurisdiction would be consistent with due process.

2. Due Process

“The Due Process Clause . . . permits the exercise of personal jurisdiction over a nonresident defendant when (1) that defendant has purposefully availed himself of the benefits and protections of the forum state by establishing minimum contacts with the forum state; and (2) the exercise of jurisdiction over that defendant does not offend traditional notions of fair play and substantial justice.” Alpine View Co. Ltd. v. Atlas Copco AB, 205 F.3d 208, 214-215 (5th Cir. 2000) (internal quotations omitted). “Minimum contacts” are established through either a showing of contacts sufficient to assert specific jurisdiction or a showing of contacts sufficient to assert general jurisdiction. Id. at 215. Specific jurisdiction is appropriate when the nonresident defendant has “purposefully directed its activities at the forum state and the litigation results from alleged injuries that arise out of or relate to those activities.” Id. (internal quotations omitted). “General jurisdiction, on the other hand, will attach where the nonresident defendant’s contacts with the forum state, although not related to the plaintiff’s cause of action, are ‘continuous and

systematic.” Id. (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415-416 (1984)). The test for minimum contacts is more stringent in situations where the defendant’s contacts are not related to the cause of action. Fava v. RRI, Inc., No. 96-CV-629, 1997 WL 205336, at *3 (N.D.N.Y. Apr. 24, 1997).

Guardian states that this Court has authority to exercise both specific and general jurisdiction over Eagle Star. However, the facts of the instant matter suggest that if jurisdiction is appropriate it is based on general jurisdiction and not specific jurisdiction. Accordingly, the Court will determine whether general jurisdiction is proper in the instant case.

It is undisputed that Defendant Eagle Star is not incorporated in the Virgin Islands and has never applied to do business here. However, Guardian argues that the documents obtained through discovery show that Eagle Star has maintained continuous and substantial Virgin Islands affiliations sufficient to confer general jurisdiction of the Court. Specifically, Guardian contends that the documents disclose the following: (1) Eagle Star, by either direct assumption of the risk or reinsurance, wrote contracts insuring more than fifty separate and distinct risks on the islands of St. Thomas, St. John, and St. Croix between 1988 and 1998;⁶ (2) the total premiums on these

⁶ Eagle Star claims it never represented that it, either directly or by reinsurance, was an underwriter on all of the policies it provided to Guardian in discovery. Rather, according to Eagle Star, the majority of the policies were transferred to it from its former parent company Eagle Star Insurance Co.. Eagle Star argues that the actions of Eagle Star Insurance Co. may not be imputed to it, and thus those policies underwritten by Eagle Star Insurance Co., whether reinsurance or direct, are irrelevant to a finding of what contacts Eagle Star had with the Territory. The Court agrees that the actions of Eagle Star’s parent company, Eagle Star Insurance Co., may not be imputed to Eagle Star. However, that is not the issue raised by Guardian’s present motion. Rather, the issue in the instant case involves the actual assumption of the role of insurer and reinsurer by the present Defendant Eagle Star, whether by virtue of being the original underwriter, or by accepting an assignment of that role from its parent company, and

contracts is estimated to be in excess of \$19 million; (3) seventeen of these contracts were for insurance coverage placed directly with Eagle Star; (4) the largest direct risk was placed from June 1995 to June 1996 and again from June 1997 to June 1998, with the assets covered under this contract including Government property—property essential to the well being of the people of the Virgin Islands.⁷

Because an analysis of general jurisdiction demands that the Court consider only Defendant's alleged contacts up to and including the time the instant case was filed, see Metropolitan Life Ins. Co. v. Robertson Ceco Corp., 84 F.3d 560, 569-570 (2d Cir. 1996), the Court will look only at those alleged contacts occurring prior to September 1996. The absence of two years, however, makes little difference to Guardian's argument. The evidence shows that even between 1988 and September 1996, Eagle Star insured approximately fifty risks in the Territory. Further, again considering only those contracts for insurance coverage between 1988 and September 1996, the Court, based on the evidence before it, estimates that Eagle Star collected premiums in excess of \$15 million.

Additionally, Guardian argues that even if the Court were to limit its analysis to the three direct risks insured by Eagle Star and its co-insurers in 1995—the year which the present

thereupon becoming the insurer for the remainder of the policy term.

⁷ Guardian contends that Eagle Star's documents reveal that when Hurricane Marilyn struck the Virgin Islands in 1995, Eagle Star insured virtually every structure owned by the Government on St. Thomas, St. Croix and St. John. According to the policy documents, the risk directly insured by Eagle Star comprised all state owned property situated in and throughout the U.S. Virgin Islands including hospitals, police stations, courts, schools, and office complexes. See Pl.'s Reply Brief, Exhibit A. Additionally, the policy indicates that the total value of the properties insured on this one Government policy was \$409,534,880. Id. at p. 1.

reinsurance dispute involves—Eagle Star’s contacts with the Virgin Islands were continuous and substantial.⁸ Guardian avers that these three insurance contracts (1) were issued as direct coverage on real and/or personal property in the Virgin Islands, (2) required substantial activities in the Virgin Islands in the event of a claim arising from a covered peril, and (3) resulted in Eagle Star’s actual presence, at least through authorized representatives, in the Virgin Islands to adjust claims following Hurricane Marilyn in 1995.

Eagle Star maintains that its limited participation on these policies does not establish substantial, continuous, and systematic business activity. In support of its argument, Eagle Star relies on the Third Circuit’s decision in Sunbelt Corp. v. Noble, Denton & Associates, Inc., 5 F.3d 28 (3d Cir. 1993). In Sunbelt, the court held, consistent with the pronouncements of the United States Supreme Court, that simply contracting with a party in a jurisdiction, without more, is insufficient to establish minimum contacts required for a court to exercise personal jurisdiction over a defendant. Sunbelt, 5 F.3d at 32.

The instant case differs from Sunbelt in two respects. First, the Sunbelt decision involved a specific jurisdiction analysis, not an analysis of general jurisdiction. Second, unlike Sunbelt, the evidence in the instant litigation suggests that Defendant Eagle Star did more than merely contract

⁸ The three direct policies—those which were not transferred to Eagle Star—are risks in the following amounts: United Corporation T/A/ Limited Shopping Plaza & Plaza Extra Supermarkets from 6/29/95 to 6/29/96 for \$24 million; Renaissance International Hotels from 7/1/95 to 7/1/96 for \$12.5million (excess of \$7.5 million); and Government of the Virgin Islands from 6/9/95 to 6/9/96 for \$11.5 million (excess of \$8.5 million). See Pl.’s Exhibit A.

with a party in the Territory. The affidavit of Nigel Twohey,⁹ stating that representatives of Eagle Star solicited business in the Virgin Islands, together with the collection of more than \$15 million in premiums on approximately fifty insurance contracts suggests that Eagle Star has “deliberately” engaged in significant activities within the Territory; or, at the very least, has created “continuing obligations” between itself and residents of the forum. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-476 (1985) (internal citations omitted).

Next, Eagle Star relies on Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408 (1984) to argue that jurisdiction is improper in the instant case. In Helicopteros, the Court found the following contacts with the State of Texas insufficient to satisfy general jurisdiction over petitioner by a Texas court: (1) petitioner sending its chief executive officer to Houston for a contract-negotiation session; (2) petitioner accepting its New York bank account checks drawn on a Houston bank; (3) petitioner purchasing helicopters, equipment, and training services from Bell Helicopter, a Texas manufacturer, for substantial sums; and (4) petitioner sending personnel to Bell’s facilities in Fort Worth for training. Helicopteros, 466 U.S. at 416.

Eagle Star’s reliance on Helicopteros is misplaced. Consistent with the Third Circuit’s

⁹ Twohey’s affidavit provides, in relevant part:

On some of my visits to the Virgin Islands on behalf of Bain Hogg, representatives from Eagle Star Reinsurance Limited were present in the Virgin Islands, attempting to secure more business from the insurance companies of this territory in the reinsurance arena. I have personal knowledge that the representatives of Eagle Star visited the U.S. Virgin Islands for this purpose from time to time, as my employment with Bain Hogg included dealing with Eagle Star.

Twohey Affidavit ¶ 12.

decision in Provident National Bank v. California Federal Savings & Loan Ass'n, 819 F.2d 434 (3d Cir. 1987), this Court finds that Helicopteros is distinguishable from the instant case. The Court will first examine the Third Circuit's decision in Provident National Bank.

In Provident National Bank, the defendant was chartered and headquartered in California, with 138 branch offices in California, 37 branch offices in Florida, 13 branch offices in Georgia, and 6 branch offices in Nevada. During the relevant period, between 700 and 1000 of the defendant's depositors resided in Pennsylvania, representing only about .066% of its one million depositors. Pennsylvania depositors contributed approximately \$10 million to the defendant's total deposits of \$14 billion in deposits (about .071%). About \$10 million of the defendant's total outstanding loans of \$12 billion (about .083%) were traceable to Pennsylvania residents. Finally, the defendant maintained no office, employees, agents, mailing address or telephone number in Pennsylvania. However, three Pennsylvania financial institutions serviced \$10.2 million of loans for the defendant. The defendant also maintained a controlled disbursement account with Mellon Bank in Pittsburgh. The plaintiff, Provident National Bank, brought its action for damages based on the defendant's failure to deliver a \$5 million certificate of deposit to another financial institution in New York. The district court denied the defendant's 12(b)(2) motion to dismiss and the Third Circuit, using a general jurisdiction analysis only, affirmed the decision.

In affirming the district court, the Third Circuit distinguished Helicopteros on its facts, stating that "the activities [in Helicopteros] were important but not central to the defendant's business." Provident Nat'l Bank, 819 F.2d at 438. Whereas in Provident National Bank, "the nature of [the defendant's] contacts with Pennsylvania respecting deposits and loans was central

to the conduct of its business,” and the defendant’s “activities relating to Pennsylvania, the borrowing and lending of money, are the bread and butter of its daily business.” Id. Thus, the court concluded that “due to the nature of its contacts, [the Provident National Bank defendant] would have a greater expectation of being haled into court in Pennsylvania than the Helicopteros defendant had of being haled into court in Texas.” Id. Additionally, the court in Provident National Bank found that [the defendant’s] maintenance of its single account at Mellon Bank constituted a “substantial, ongoing and systematic activity in Pennsylvania” because its daily contact with Mellon Bank “was a continuous and central part” of its business. Id.

In the instant case, Guardian argues and the Court agrees that the “bread and butter of [Eagle Star’s] daily business” is insuring and reinsuring risks. Id. Further, Guardian avers that insuring risks in real property and improvements is, by its very nature, continuous and ongoing because (1) real property cannot be moved, (2) the insurer is required, throughout the duration of the contract, to pay in accordance with the contract terms should the insured suffer a loss, and (3) the insurer may typically be sued for denying a claim for some period, usually not less than a year, after the loss or the termination of the contract of insurance. The Court is persuaded by Guardian’s argument.

Finally, the factual and legal circumstances surrounding the instant case are essentially identical to the circumstances in Teleco Oilfield Services., Inc. v. Skandia Insurance Co., Ltd., 656 F. Supp. 753 (D.Conn. 1987). In Teleco, the district court held that the defendant insurance companies had sufficient contacts with Connecticut to satisfy due process requirements based upon (1) the number of direct insurance and reinsurance agreements the defendants had with

Connecticut insurance companies, and (2) the considerable premiums collected by each of the defendants from these various insurance contracts in Connecticut. Teleco, 656 F. Supp. at 758-759. For example, the court in Teleco noted that one of the defendants was paid total premiums of approximately \$4 million on its thirty-one policies of direct insurance in Connecticut. Id. The court further noted that this did not even include the premiums from reinsurance contracts in Connecticut. Id. at 759. Similar to the defendant in Teleco, the instant Defendant, Eagle Star, has numerous direct insurance and reinsurance contracts with the Territory and collects millions in premiums from these contracts.

III. Conclusion

The affidavit of Twohey along with the numerous direct insurance contracts and reinsurance contracts from which Eagle Star collected millions in premiums supports the conclusion that Eagle Star purposely availed itself of the privilege of conducting business within the forum territory. Furthermore, because the evidence indicates that prior to the filing of the instant lawsuit Eagle Star had been insuring residents of the Virgin Islands for a period of eight years, its contacts with the Virgin Islands are continuous and systematic. Finally, Eagle Star comes within the ambit of not only subsection (a)(6), but also subsection (a)(1) of the Virgin Islands long-arm statute. Therefore, the Court concludes that its exercise of jurisdiction is consistent with both the Due Process Clause and the Virgin Islands long-arm statute. An appropriate order is attached.

ENTER:

DATED: October ____, 2000

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:
Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

NOT FOR PUBLICATION

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

| | | |
|------------------------------------|---|--------------------|
| GUARDIAN INSURANCE COMPANY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL NO. 1996-180 |
| v. |) | |
| |) | |
| BAIN HOGG INTERNATIONAL LIMITED |) | |
| and EAGLE STAR REINSURANCE COMPANY |) | |
| LIMITED, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

ORDER

Presently before the Court is Plaintiff Guardian Insurance Co.'s ("Guardian") Motion in Support of Personal Jurisdiction over Defendant Eagle Star Reinsurance Co. Ltd. ("Eagle Star"). For the reasons stated in the attached Memorandum Opinion, it is hereby

ORDERED that Guardian's Motion is **GRANTED**. This Court has personal jurisdiction over Defendant Eagle Star. Accordingly, it is hereby further

ORDERED that the portion of this Court's May 8, 1997 Memorandum Opinion and Order dismissing Guardian's claims against Eagle Star is **VACATED**.

ENTER:

DATED: October ____, 2000

RAYMOND L. FINCH
U.S. DISTRICT JUDGE

A T T E S T:

Orinn F. Arnold
Clerk of Court

by: _____
Deputy Clerk

cc: Adam Christian, Esq.
Sharmane Brathwaite-Davis, Esq.
Simone Francis, Esq.
Magistrate Judge Geoffrey W. Barnard