UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-62080-CIV-SINGHAL/VALLE

NOBLE HOUSE, LLC,

Plaintiff,

v.

UNDERWRITERS AT
LLOYD'S, LONDON,

Defendant.
_____/

AMENDED ORDER ON MOTION TO DISMISS

THIS CAUSE is before the Court on Defendant Certain Underwriters at Lloyd's, London's ("Underwriters")[1] Motion to Dismiss the Amended Complaint (DE [9]). Plaintiff Noble House, LLC has filed a Response in Opposition (DE [10]), and Underwriters filed a Reply (DE [11]). For the reasons discussed below, the Court grants Underwriters' Motion to Dismiss for lack of personal jurisdiction.

I. BACKGROUND

Noble House filed a two-count Amended Complaint (DE [8]) for breach of contract and a declaratory judgment involving a marine insurance policy. Noble House alleges that, in February 2018, it purchased the subject policy issued by Underwriters to insure a 2005 177' Sensation Yachts motor yacht ("the Vessel"). Am. Compl. ¶ 20 (DE [8]); *see also* Ex. B to Am. Compl. (DE [8-2]). The subject policy allegedly provided coverage for

[1] Underwriters notes that its correct full name is Certain Underwriters at Lloyd's London Subscribing to Policy No. MS-S 5722. Mot. to Dismiss 1 n.1 (DE [9]).

property damage—known as "hull insurance"—and for commercial towing and assistance. Am. Compl. ¶ 21 (DE [8]); *see also id.* at ¶ 30.

A. Jurisdictional Allegations

Noble House, the named insured, alleges that it is an LLC formed in the Republic of the Marshall Islands with its principal place of business in Texas. *Id.* ¶ 17. Noble House further alleges that Underwriters is a "corporation from England that conducts business in the State of Florida with agents or representatives that operate in Florida as Argonaut Insurance Company." *Id.* ¶ 19.

Noble House alleges that this Court has specific personal jurisdiction over Underwriters under Federal Rule of Civil Procedure 4(k) and Florida Statute section 48.193(1)(a) (2020) because Underwriters had a general course of business in Florida and purposefully availed itself of conducting activity in Florida. *Id.* ¶ 6. Specifically, Noble House alleges that "the lead underwriter of Lloyd's Syndicate 1200 called ArgoGlobal . . . conducts business in Florida as a registered corporation authorized to transact business in Florida under the name Argonaut Insurance Company" and offers insurance services to Florida residents. *Id.* ¶ 7; *see also* Ex. A to Am. Compl. (DE [8-1]).

Without specificity, Noble House further alleges that Underwriters: "[e]ngaged in solicitation or service activities" within Florida, *id.* ¶ 8; "[c]ontract[ed] to insure a person, property, or risk located within this state at the time of contracting," *id.* ¶ 9; "[b]reach[ed] a contract in this state by failing to perform acts required by the contract to be performed in this state to provide coverage for the losses suffered from the negligence of the Florida shipyard," *id.* ¶ 10; "[e]nter[ed] into a contract wherein [Underwriters] agreed to submit to

'the jurisdiction of a Court of competent jurisdiction within the United States,'" *id.* at ¶ 11, and "[e]ngaged in substantial activity" within Florida, *id.* ¶ 12.

Regarding general personal jurisdiction, Noble House alleges that Underwriters has "continuous and systematic business contacts with the state of Florida including agents and/or members and/or employees, acting in the scope of their agency or employment, who carried out the business of [Underwriters] in Florida by contracting to insure and provide coverage to the Vessel for damage incurred from negligence in Florida." Am. Compl. ¶ 13 (DE [8]). Noble House also alleges that "in addition to owning, using, possessing, renting or leasing branch offices in Florida, [Underwriters] had regular and systematic business communications with individuals and business in this state to offer insurance services to Florida residents and to cover losses incurred in Florida." *Id.* ¶ 14. Noble House alleges that due process is satisfied because its claim relates to Underwriters' Florida contacts, and Underwriters purposefully availed itself of Florida's laws. *Id.* ¶ 15.

B. Factual Allegations

Noble House alleges that *before* it purchased the subject policy, the Vessel underwent a refit operation in Dania Beach, Florida, to adjust the rudders, rudder shaft logs, and rudder retaining mechanisms. *See* Am. Compl. ¶ 22 (DE [8]). The Vessel left the Dania Beach shipyard about fourteen months later, when the refit was complete. *See id.* ¶ 23.

Noble House alleges that in August 2018—during the policy period—the Vessel "lost its portside rudder while entering a channel in the Bahamas" en route to Fort Lauderdale, Florida. *Id.* ¶¶ 24–25. This damage required the services of a local salvor.

Id. ¶ 25. Noble House alleges that an investigation revealed that the Vessel lost its portside rudder because of the Dania Beach shipyard's negligence of "failing to secure the heavy hex nut of the port rudder and deviat[ing] from the American Bureau of Shipping[-]approved plan." *Id.* ¶¶ 26–27. Shortly after the incident, the Vessel was towed to Fort Lauderdale to undergo repairs there, which Noble House allegedly paid for. *Id.* ¶ 28.

Noble House alleges that, the day after the damage occurred, it notified Underwriters of the loss through Underwriters' agent, Tim Obenhaus of McGriff, Seibels & Williams. *Id.* ¶ 29. Noble House alleges, however, that Underwriters has not paid for the damages as required by the policy, despite Underwriters' receipt of timely notice and all the requested information. *Id.* ¶ 31. After Underwriters investigated, it allegedly issued a letter to Noble House through Underwriters' Florida agent, Davant Law, informing Noble House that coverage "may not exist." *Id.* ¶ 32.

Under the breach-of-contract claim, Noble House alleges that Underwriters "has no valid basis for declining coverage" under the policy, *id.* ¶ 41, and that Noble House has incurred more than $500,000 in salvage and repair expenses, *id.* ¶ 44. Under the declaratory-relief claim, Noble House requests that this Court construe the subject policy to determine Noble House's rights. *See id.* ¶¶ 46–53.

Underwriters now moves to dismiss the Amended Complaint for lack of personal jurisdiction, improper venue, failure to state a claim, and forum non conveniens. Mot. to Dismiss 1 (DE [9]). As discussed below, because the Court has no personal jurisdiction over Underwriters, the Court need not reach the remaining grounds for dismissal.

II. LEGAL STANDARD

To survive a motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), "a plaintiff must plead sufficient facts to establish a prima facie case of jurisdiction over the non-resident defendant." *Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1286 (S.D. Fla. 2014) (citing *Virgin Health Corp. v. Virgin Enters. Ltd.*, 393 F. App'x 623, 625 (11th Cir. 2010)). "If the defendant is able to refute personal jurisdiction by sustaining its burden of challenging the plaintiff's allegations through affidavits or other competent evidence, the plaintiff must substantiate its jurisdictional allegations through affidavits, testimony, or other evidence of its own." *Id.* (citing *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000)). "[W]hen the plaintiff offers no competent evidence to the contrary, 'a district court may find that the defendant's unrebutted denials [are] sufficient to negate plaintiff's jurisdictional allegations.'" *Thompson v. Carnival Corp.*, 174 F. Supp. 3d 1327, 1334 (S.D. Fla. 2016) (alteration in original) (quoting *Zapata v. Royal Caribbean Cruises, Ltd.*, 2013 WL 1100028, at *2 (S.D. Fla. Mar. 15, 2013)).

III. DISCUSSION

A court engages in a two-step process to determine whether personal jurisdiction exists over a nonresident defendant: "[T]he exercise of jurisdiction must (1) be appropriate under the state long-arm statute and (2) not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009) (footnote omitted) (citing *Horizon Aggressive Growth, L.P. v. Rothstein–Kass, P.A.*, 421 F.3d 1162, 1166 (11th Cir. 2005)). "[T]o subject a defendant to an in personam judgment when he is not present within the territory

of the forum, due process requires that the defendant have certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 500 (Fla. 1989) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945)). "[T]he test is whether the defendant's conduct in connection with the forum state is 'such that he should reasonably anticipate being haled into court there.'" *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Underwriters argues that the Court lacks both general and specific personal jurisdiction over it.

A. General Personal Jurisdiction

Regarding general jurisdiction under Florida's long-arm statute, "[a] defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity." Fla. Stat. § 48.193(2) (2020). Under the U.S. Constitution, a "court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A corporation's place of incorporation and its principal place of business are generally the only "limited set of affiliations with a forum [that] will render a defendant amenable to all-purpose jurisdiction there." *Id.* at 137 (citation omitted).

The Court agrees with Underwriters that its contacts in Florida are not substantial, continuous, and systematic enough to subject it to general jurisdiction under Florida's

long-arm statute or the U.S. Constitution. *See Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1318 (11th Cir. 2006) (stating that "substantial and not isolated activity" under Fla. Stat. § 48.193(2) means the same thing as "continuous and systematic general business contact with Florida" under the Due Process Clause (citations omitted)). Noble House alleges that Underwriters has agents, members, or employees who carried out Underwriters' business in Florida "by contracting to insure and provide coverage to the Vessel for damage incurred from negligence in Florida." Am. Compl. ¶ 13 (DE [8]). Noble House also alleges that Underwriters "had regular and systematic business communications with individuals and business in this state to offer insurance services to Florida residents and to cover losses incurred in Florida." *Id.* ¶ 14. Attached to the Amended Complaint is a Florida Division of Corporations website printout showing that Argonaut Insurance Company is a foreign profit corporation that has a principal place of business in Illinois, a mailing address in Texas, and a registered agent in Tallahassee, Florida. (DE [8-1]).

But these facts are insufficient to confer general jurisdiction over Underwriters under Florida's long-arm statute. *See, e.g.*, *Woodruff-Sawyer & Co. v. Ghilotti*, 255 So. 3d 423, 429 (Fla. 3d DCA 2018) ("The allegation that Woodruff-Sawyer 'was a foreign corporation authorized to transact business in Florida and designated a Florida registered agent to accept service of process,' without more, can hardly be described as substantial and not isolated activity."). Nor are the allegations sufficient under the *Daimler*/*Goodyear* standard of due process. *See id.* (holding that, under *Daimler*, 571 U.S. at 139, no general jurisdiction was present because "Woodruff-Sawyer is not incorporated in Florida, does not maintain its principal place of business in Florida, and is not so heavily engaged in

activity in Florida as to render it essentially at home in Florida"). "[V]ague and conclusory allegations" do not establish a prima facie case of personal jurisdiction. *See Snow*, 450 F.3d at 1318 (citing *Posner v. Essex Ins. Co.*, 178 F.3d 1209, 1217–18 (11th Cir.1999)).

And regarding Noble House's allegation that Underwriters' Florida agents contracted to insure the Vessel for negligence that occurred in Florida, *see* Am. Compl. ¶ 13 (DE [8]), the Eleventh Circuit has held that "the existence of a contract between the foreign defendant and a resident of the forum state" does *not* "automatically amount to 'purposeful availment.'" *Sea Lift, Inc. v. Refinadora Costarricense de Petroleo, S.A.*, 792 F.2d 989, 993 (11th Cir. 1986) (citation omitted); *see also Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1293 (11th Cir. 2000) ("[W]here a foreign corporation does not engage in general business in the forum, simply negotiating a contract there will not support general in personam jurisdiction." (citing *Sea Lift, Inc.*, 792 F.2d at 992)).

Further, even if Noble House's general-jurisdiction allegations were sufficient for a prima facie case, Underwriters has challenged the allegations through the Declaration of Robert Dobson, the marine and energy claims manager at ArgoGlobal. *See* Dobson's Decl. (DE [9-1], ¶ 2). ArgoGlobal "does business in the Underwriters market as Underwriters Syndicate 1200," which is "the lead underwriter" for the subject policy. *Id.* Syndicate 1200 is organized under the United Kingdom's laws, *id.* ¶ 3, and is not licensed to conduct business in Florida, except as a registered surplus-lines insurer, *see id.* ¶¶ 5, 15. But the subject policy is not a surplus-lines policy. *Id.* ¶¶ 11, 12. Syndicate 1200 is not the same entity as Argonaut Insurance Company, the entity pleaded in Noble House's Amended Complaint, *see id.* ¶ 6, though they both "share the same corporate parent," *id.* ¶ 8. Perhaps most notably, "Argonaut Insurance Company was not involved in the

procuring of the insurance policy for [Noble House] in this case, nor did it issue the insurance policy to [Noble House] in this case." *Id.* ¶ 9. The retail broker of the policy in this case is a Texas corporation, and the wholesale broker is a United Kingdom corporation. *Id.* ¶¶ 12–14.

Syndicate 1200 and the other subscribing syndicates do not maintain a place of business, phone number, office, or any officers or agents in Florida, nor have they operated a business venture in Florida. *See id.* ¶¶ 16–17, 19, 21, 24, 26. Further, Syndicate 1200 does "not have regular and systematic business communications with individuals and business in this state to offer insurance services to Florida residents and to cover losses incurred in Florida." *Id.* ¶ 22.

Thus, the burden shifts to Noble House to substantiate its allegations with its own evidence. *See Peruyero*, 83 F. Supp. 3d at 1286. Noble House responds that this Court may exercise general jurisdiction under Florida's long-arm statute because Underwriters admits is sells surplus-lines insurance in Florida, "Argonaut was created as a mere formality to act on behalf of Argo Group in Florida," and the Argo Group website specifically references Syndicate 1200. Resp. in Opp'n 13–14 (DE [10]); *see also* (DE [10-3]). Noble House also dedicates much of its response to arguing that this Court may exercise general personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2) because this suit arises under admiralty jurisdiction, and Underwriters expressly admitted that it sells surplus-lines insurance in Florida, accepts service of process in New York, and sold the subject policy through a retail broker incorporated in Texas, which establish minimum contacts with the United States. *See* Resp. in Opp'n 8–11 (DE [10]).

These arguments are unavailing. First, as discussed above, Argonaut Insurance Company's state of incorporation and principal place of business are in Illinois. Noble House has failed to produce any evidence showing that Argonaut's activities in Florida are so substantial, not isolated, continuous, and systematic so as to render it at home here. *See Daimler*, 571 U.S. at 139 n.19; *Woodruff-Sawyer & Co.*, 255 So. 3d at 429.

Second, Rule 4(k)(2) does not confer jurisdiction. "Rule 4(k)(2)—the so-called federal long-arm statute—permits a federal court to aggregate a foreign defendant's nationwide contacts to allow for personal jurisdiction provided that two essential conditions are met: '(1) plaintiff's claims must arise under federal law; and (2) the exercise of jurisdiction must be consistent with the Constitution and laws of the United States.'" *Thompson*, 174 F. Supp. 3d at 1337 (quoting *Fraser v. Smith*, 594 F.3d 842, 848–49 (11th Cir. 2010)).[2] "For purposes of Rule 4(k)(2), the applicable forum for the minimum contacts analysis is the United States as a whole." *Id.* (citing *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220 (11th Cir. 2009)).

But courts rarely invoke jurisdiction under Rule 4(k)(2). *Id.* Indeed, another court in this district has noted that, "[i]n the wake of the Supreme Court's decision in *Daimler*, it appears unlikely that general jurisdiction over a foreign defendant could ever be available under 4(k)(2)." *Id.* at 1338 n.9. For example, the Eleventh Circuit has held that a French manufacturer of catamarans that had distribution agreements with dealers in Florida, marketed its vessels in Florida, attended a trade show in Florida, and had an agreement with a Maryland-based financing company to help buyers and dealers in the United States

[2] Underwriters concedes that this Court "unquestionably possesses admiralty jurisdiction" over the marine insurance contract in this case. Mot. to Dismiss 2 n.1 (DE [9]). Thus, the federal-law requirement of Federal Rule of Civil Procedure 4(k)(2) is satisfied.

satisfied *neither* Florida's long-arm statute for general jurisdiction *nor* Rule 4(k)(2). *Schulman v. Inst. for Shipboard Educ.*, 624 F. App'x 1002, 1005, 1006 (11th Cir. 2015). Under Rule 4(k)(2), the French company's connections with the United States—which included 12% of its sales directed to the United States—were "not 'so substantial' as to make this one of those 'exceptional' cases in which a foreign corporation is 'essentially at home' in a forum other than its place of incorporation or principal place of business." *Id.* at 1006 (quoting *Daimler*, 571 U.S. at 138 n.19).

The same is true here. The Court does not find that a Texas retail broker, a New York agent designated for service of process, and an *unspecified* quantity of Florida sales of surplus-lines insurance are sufficient to establish general jurisdiction under Rule 4(k)(2). *See, e.g.*, *Sherritt, Inc.*, 216 F.3d at 1293 ("We also reject Plaintiffs' argument that [the foreign corporation] is amenable to service of process under Rule 4(k)(2) because it appointed an agent for service of process in connection with the offerings of bonds and debentures. The casual presence of a corporate agent in the forum is not enough to subject the corporation to suit where the cause of action is unrelated to the agent's activities." (citing *Int'l Shoe*, 326 U.S. at 317)).

B. Specific Personal Jurisdiction

Nor has Noble House established specific personal jurisdiction under the facts of this case. "[A] Florida court can exercise specific personal jurisdiction—that is, jurisdiction over suits that arise out of or relate to a defendant's contacts with Florida—if the claim asserted against the defendant arises from the defendant's contacts with Florida, and those contacts fall within one of the enumerated categories set forth in section 48.193(1)(a)." *Thompson*, 174 F. Supp. 3d at 1333 (citing *Schulman*, 624 F. App'x at

1004–05). Noble House argues that the Amended Complaint satisfies the statutory subsection for Underwriters' "[o]perating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state." Fla. Stat. § 48.193(1)(a)1. (2020).[3]

Even if Florida's long-arm statute is satisfied for specific jurisdiction, the Court must also analyze due process under a three-part test:

> (1) whether the plaintiff's claims arise out of or relate to at least one of the defendant's contacts with the forum; (2) whether the nonresident defendant purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws; and (3) whether the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice.

Louis Vuitton Malletier, S.A. v. Mosseri, 736 F.3d 1339, 1355 (11th Cir. 2013) (internal quotation marks and citations omitted).

"The plaintiff bears the burden of establishing the first two prongs, and if the plaintiff does so, a defendant must make a compelling case that the exercise of jurisdiction would violate traditional notions of fair play and substantial justice." *Id.* (internal quotation marks and citation omitted). In determining whether jurisdiction would comport with traditional notions of fair play and substantial justice, the Court analyzes: "(1) the burden on the defendant; (2) the forum's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; and (4) the judicial system's interest in resolving the dispute." *Id.* at 1358 (internal quotation marks omitted).

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[3] Underwriters maintains that this Court has no specific jurisdiction, but, even if it did, only three subsections could arguably apply: (1)(a)1., (1)(a)4., or (1)(a)7. Mot. to Dismiss 4–7 (DE [9]). In its Response, Noble House addresses only subsection (1)(a)1. as conferring specific jurisdiction. *See* Resp. in Opp'n 6, 11–13 (DE [10]).

Based on Noble House's failure to address subsections 4. and 7., the Court assumes, like Underwriters does in its Reply, that Noble House "concedes that there is no jurisdiction" under those subsections. *See* Reply 5 n.3 (DE [11]).

Here, Noble House contends that this Court has specific jurisdiction because Underwriters engaged in business in Florida through its agent Argonaut Insurance Company. Resp. in Opp'n 12 (DE [10]) (citing Fla. Stat. § 48.193(1)(a)1.). Noble House also argues that conspicuously absent from Dobson's Declaration is a refutation of Noble House's allegation that "Underwriters sells insurance through an agent in Florida." *Id.* at 12.

The Court disagrees. With respect to the statutory "arising from" language, under Florida law, "there must . . . be some 'direct affiliation,' 'nexus,' or 'substantial connection' between the cause of action and the activities within the state" to satisfy specific jurisdiction. *St. Martinus Univ., NV v. Caribbean Health Holding, LLC*, 2020 WL 956301, at *10 (S.D. Fla. Feb. 27, 2020) (quoting *Sun Trust Bank v. Sun Int'l Hotels Ltd.*, 184 F. Supp. 2d 1246, 1269 (S.D. Fla. 2001)). Underwriters has sufficiently refuted Noble House's allegations of specific personal jurisdiction. Underwriters averred in its Declaration that it has "never operated, conducted, or engaged in or carried on a business venture, or had an office or agency in Florida or elsewhere in the United States." Dobson's Decl. ¶ 26 (DE [9-1]). Most significantly, Argonaut Insurance Company—which, according to Noble House, provides the requisite nexus—"was *not involved in the procuring* of the insurance policy for [Noble House] in this case, *nor did it issue* the insurance policy to [Noble House] in this case." *See id.* ¶ 9 (emphasis added). In fact, Noble House purchased the subject policy from a retail broker incorporated in Texas, and the wholesale broker of the policy is incorporated in the United Kingdom. *Id.* ¶¶ 13–14. The policy insures a Marshall Islands LLC whose principal resides in Texas. Am. Compl.

¶ 17 (DE [8]); Dobson's Decl. ¶ 12 (DE [9-1]).[4] Thus, Underwriters has shown that it does not operate in Florida and did not issue the policy in this case.

The Court also rejects Noble House's assertion of agency liability between Underwriters and Argonaut Insurance Company. With no elaboration, Noble House cites *State v. American Tobacco Co.*, 707 So. 2d 851 (Fla. 4th DCA 1998). There, Florida's Fourth District Court of Appeal stated "[t]he law is clear that the mere presence of a wholly owned subsidiary is insufficient to form a basis for the assertion of personal jurisdiction." *Id.* at 854 (citations omitted). Instead, under an agency theory, "the amount of control the parent exercises must be very significant." *Id.* at 855; *see, e.g.*, *Daimler*, 571 U.S. at 135 n.13 ("[A] corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there." (citations omitted)); *Sherritt, Inc.*, 216 F.3d at 1293 ("Where the subsidiary's presence in the state is primarily for the purpose of carrying on its own business and the subsidiary has preserved some semblance of independence from the parent, jurisdiction over the parent may not be acquired on the basis of the local activities of the subsidiary." (internal quotation marks and citation omitted)); *Meier*, 288 F.3d at 1273 ("Agency is not, however, limited to a parent-subsidiary relationship. Personal jurisdiction over affiliated parties, whether a parent or another related subsidiary, is warranted when the resident corporation acts on behalf of those foreign affiliates." (citations omitted)).

[4] Dobson also attests that Underwriters "know[s] of no connection between the incident alleged in the Amended Complaint and Florida, as the alleged incident did not occur in Florida, nor did the alleged loss occur to property located in the State of Florida." Dobson's Decl. ¶ 27 (DE [9-1]). To the extent that this statement conflicts with Noble House's allegation that "[a]t all times material hereto, the Policy was [in] full force and effect and provided coverage" to the Vessel, Am. Compl. ¶ 30, any conflict must be resolved in Noble House's favor at this stage. *See Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1269 (11th Cir. 2002) (citation omitted).

But *American Tobacco Co.* does not support Noble House's position. By Underwriters' own admission, "Syndicate 1200 and Argonaut Insurance Company are both wholly owned subsidiaries of Argo Group." Dobson's Decl. ¶ 7 (DE [9-1]). "While Syndicate 1200 and Argonaut Insurance Company share the same corporate parent, they are *entirely distinct entities that operate separately*." *Id.* ¶ 8 (emphasis added). Argonaut Insurance Company "did not act on behalf of Syndicate 1200" in this case. Mot. to Dismiss 5 (DE [9]). Thus, this case does not involve the parent-subsidiary relationship discussed in *American Tobacco Co*.; it involves the even more attenuated relationship of two wholly distinct co-subsidiaries. Contrary to Noble House's assertion, *see* Resp. in Opp'n 13–14 (DE [10]), it has not sufficiently alleged that Underwriters exercises sufficient control over Argonaut so as to qualify as Underwriters' agent.

Further, even if this Court has specific personal jurisdiction over Underwriters under Florida's long-arm statute, the Court concludes that exercising jurisdiction would not comport with constitutional due process. *See Mosseri*, 736 F.3d at 1355. As discussed above, the wholesale broker of the policy is incorporated in the United Kingdom, the retail broker is incorporated in Texas, and the policy insures a Marshall Islands LLC whose principal lives in Texas. Accepting the allegations in the Amended Complaint as true, the Vessel was damaged "while entering a channel in the Bahamas" and was initially serviced there before being towed to Fort Lauderdale to be repaired. Am. Compl. ¶¶ 25, 28 (DE [8]). Although an unnamed Florida shipyard was allegedly negligent in adjusting the rudder, that negligence was purportedly committed *before* the subject policy was even purchased. *See id.* ¶¶ 22–23, 26–27. Thus, the relatedness prong is not satisfied. *See Mosseri*, 736 F.3d at 1355 ("[A] fundamental element of the

specific jurisdiction calculus is that plaintiff's claim must arise out of or relate to at least one of the defendant's contacts with the forum." (alteration in original) (quoting *Fraser v. Smith*, 594 F.3d 842, 850 (11th Cir. 2010))).

Moreover, although the policy allegedly covered the commercial towing to Fort Lauderdale, *see id.* ¶¶ 21, 28, it cannot be said that Underwriters purposefully availed itself of conducting activities within Florida such that it invoked the benefit of Florida's laws. *See Mosseri*, 736 F.3d at 1355. The allegation that Underwriters is registered to provide surplus-lines insurance in Florida—without more—is insufficient to allow Underwriters to reasonably anticipate being haled into court here for an unrelated marine insurance claim arising out of damage that occurred in the Bahamas. *See id.* at 1357; *see also* Dobson's Decl. ¶¶ 5, 11, 12, 15 (DE [9–1]); *cf. Aviation One of Fla., Inc. v. Airborne Ins. Consultants (PTY), Ltd*, 722 F. App'x 870, 881 (11th Cir. 2018) (discussing two cases in which out-of-state insurance brokers purposefully availed themselves of the benefits of the forum's laws by entering into "an agreement to procure insurance to cover a person, property, or risk in the forum state" (citing *Ruiz de Molina v. Merritt & Furman Ins. Agency, Inc.*, 207 F.3d 1351, 1357–58 (11th Cir. 2000); *Cronin v. Wash. Nat'l Ins. Co.*, 980 F.2d 663, 670 (11th Cir. 1993))); *Ruiz de Molina*, 207 F.3d at 1357 ("The stream of commerce test for jurisdiction is met if the nonresident's product is purchased by or delivered to a consumer in the forum state, so long as the nonresident[]'s conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there for claims arising out of that conduct." (citing *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980))). As Underwriters points out, it appears that the policy attached to Noble House's Amended Complaint contains a provision

stating that it is "registered and delivered as a surplus lines coverage under the insurance code of the State of Texas . . . ." (DE [8-2], at CM/ECF p. 2, ¶ 11). There is no indication that the policy was intended to insure property or a risk in Florida. Thus, Noble House has failed to show that Underwriters has purposefully availed itself of Florida's laws.

And, regarding the due-process test of fair play and substantial justice, the Court agrees with Underwriters that: (1) as a corporation based in the United Kingdom, Underwriters would suffer a substantial burden by having to litigate in Florida; (2) Florida has no interest in litigating this dispute that has, at best, a weak nexus with Florida based on the post-damage repairs performed in Fort Lauderdale; (3) it is unclear what interest Noble House has in obtaining relief in Florida other than mere convenience, which is insufficient to overcome due-process concerns; and (4) the Florida judicial system has little interest in resolving this dispute.[5] *See Mosseri*, 736 F.3d at 1358. Thus, Underwriters has made a "compelling case" that exercising personal jurisdiction over it would violate traditional notions of fair play and substantial justice. *See id.* at 1355.

As an aside, the Court notes that Noble House's attachment of a PACER search result of forty-six actions involving Underwriters, some as plaintiff, in the Southern District of Florida is irrelevant to Underwriters' contacts with Florida or the United States *in this particular case*. *See* Resp. in Opp'n 10 (DE [10], [10-1]). A case's pleadings, posture, and procedural history depend entirely on the arguments raised by the parties or attorneys. If Underwriters—as a defendant—is not subject to personal jurisdiction in a

[5] The subject policy has a forum-selection clause providing that the parties "agree[] to submit to the exclusive jurisdiction of the courts of England and Wales." (DE [8-2], at CM/ECF p. 14). But the parties disagree about the application of this provision as construed with another provision on the cover page of the policy, which provides that Underwriters will submit to the jurisdiction of a court in the United States under certain circumstances. *See* (DE [8-2], at CM/ECF p. 2, ¶ 3). The Court need not resolve this dispute at this stage.

specific court, it is incumbent on Underwriters to make such an argument. That is exactly what Underwriters did here. *See generally Melgarejo v. Pycsa Panama, S.A.*, 537 F. App'x 852, 862 (11th Cir. 2013) ("[A] current defendant's prior decision to bring a suit in Florida should not act indefinitely as a sword of Damocles hanging perilously over the head of that defendant if [it] later challenges jurisdiction in a separate suit (albeit a suit arising from the same subject matter)." (second alteration in original) (quoting *Gibbons v. Brown*, 716 So. 2d 868, 870 (Fla. 1st DCA 1998))).

In the same vein, the Court cautions the parties and future litigants that nothing in this Order should be read as broadly concluding, as a matter of law, that Certain Underwriters at Lloyd's, London as a defendant may *never* be subject to general or specific personal jurisdiction in Florida or in any other forum in the United States. Rather, the Court has determined—based on the particular pleadings and motions made by the parties in this case—that Noble House has failed to carry its pleading burden of alleging a prima facie case of personal jurisdiction and its evidentiary burden of refuting Underwriters' challenges with its own evidence.

IV. CONCLUSION

In summary, the Court finds that, under the facts of this case, Underwriters is not subject to general or personal jurisdiction under Florida's long-arm statute, Federal Rule of Civil Procedure 4(k)(2), or the United States Constitution. Underwriters has adduced sufficient evidence to challenge personal jurisdiction, and Noble House has failed to carry its burden of producing counterevidence to substantiate a basis for jurisdiction. *See Peruyero*, 83 F.3d at 1286. Underwriters' unrebutted denials are sufficient to negate Noble House's jurisdictional allegations. *See Thompson*, 174 F. Supp. 3d at 1334. The

Court therefore need not reach Underwriters' other grounds for dismissal. Accordingly, it is hereby

ORDERED AND ADJUDGED that Underwriters' Motion to Dismiss the Amended Complaint (DE [9]) is **GRANTED** for lack of personal jurisdiction. This action is **DISMISSED WITHOUT PREJUDICE**. The Clerk is directed to **CLOSE** this case.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 2nd day of March 2021.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel via CM/ECF