

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

U.S. SPECIALTY INSURANCE COMPANY,	§	
	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 4:20-cv-1850
	§	
GARTNER, INC.,	§	
	§	
Defendant.	§	

**DEFENDANT GARTNER'S MOTION TO DISMISS AMENDED COMPLAINT  
FOR LACK OF PERSONAL JURISDICTION**

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**DEFENDANT GARTNER’S MOTION TO DISMISS AMENDED COMPLAINT  
FOR LACK OF PERSONAL JURISDICTION**

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Defendant Gartner, Inc. (“Gartner”) moves to dismiss the Amended Complaint [ECF 23] by Plaintiff United States Specialty Insurance Company (“USSIC”) under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction.<sup>1</sup>

**I. SUMMARY OF ARGUMENT**

This is an insurance coverage case that involves the interpretation of an event cancellation policy, Policy Number U-19/7004347, issued to Gartner under USSIC’s name (the “Gartner Policy”). Gartner is a technology research and advisory firm that is headquartered in Connecticut and stages large-scale events and conferences throughout the world. As a result of the COVID-19 pandemic, Gartner has been forced to cancel many of its events and is now seeking coverage under the Gartner Policy. USSIC filed this action the same day it first notified Gartner, through its Massachusetts affiliate, that USSIC rejects Gartner’s interpretation of the Policy.

USSIC’s Amended Complaint presents issues of policy interpretation that are not tied to anything in Texas: (1) USSIC asserts that the Policy’s Reinstatement of Limits clause does not permit Gartner to “reinstate” the aggregate annual limit of coverage to provide \$300,000,000 in annual coverage and instead the Policy only permits reinstatement of the limits for individual shows and only on certain conditions; and (2) USSIC asserts that the Policy’s so-called “fortuity” or “known loss” exclusion applies to prevent Gartner from accessing the full policy limits for

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<sup>1</sup> Gartner has also moved to dismiss this action as an improper anticipatory declaratory judgment action or, in the alternative, to transfer it to the Southern District of New York, where Gartner has now commenced an action against both USSIC and its Massachusetts affiliate, HCC Specialty Underwriters, Inc.

losses caused by COVID-19, even though COVID-19 was not a known risk when the Policy was issued.

Putting aside the legal and factual shortcomings of USSIC's claims, Gartner moves to dismiss this action because Gartner is not subject to suit in Texas for two fundamental reasons:

1. Gartner is incorporated in Delaware and maintains its principal place of business in Connecticut. According to *Daimler AG v. Bauman*, 571 U.S. 117 (2014), and its progeny, Gartner it is not "at home" and cannot be subject to general personal jurisdiction in Texas; and
2. This insurance policy was negotiated, brokered, purchased, and delivered in New York and Massachusetts. Because none of the matters giving rise to this action have any connection to Texas, Gartner has not purposefully availed itself of the privilege of doing business in Texas with respect to this dispute, and is not subject to specific personal jurisdiction in Texas.

Accordingly, Gartner respectfully requests that this case be dismissed under Rule 12(b)(2).<sup>2</sup>

## II. PROCEDURAL HISTORY

USSIC filed its initial Complaint in this matter on May 27, 2020. ECF 1. Gartner timely filed two motions: one to dismiss for lack of personal jurisdiction; and one to dismiss as an improper anticipatory declaratory judgment action, or, in the alternative, to transfer the case to be consolidated with Gartner's pending affirmative suit in the Southern District of New York. ECF 11; ECF 12. Recognizing that its initial Complaint was inadequate, USSIC filed an Amended Complaint on July 14, in an unsuccessful attempt to bolster its jurisdictional allegations. The scattershot jurisdictional allegations in the Amended Complaint fail to make out a *prima facie* case of either general or specific personal jurisdiction over Gartner in Texas.

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<sup>2</sup> USSIC has filed a nearly identical action against Gartner, Civil Action No. 4:20-cv-1851, involving a second event cancellation policy, Policy Number U-19/7000957 (the "Evanta Policy"). Gartner has filed a similar pair of motions to dismiss in that case.

### III. FACTS

#### A. Facts Relevant to General Jurisdiction

In its Amended Complaint, USSIC properly alleges that Gartner is incorporated in Delaware and has its principal place of business in Connecticut. ECF 23 at ¶ 7. In a futile effort to make it look as if Gartner is “at home” in this forum, the Amended Complaint alleges that Gartner has three offices in Texas, employing approximately 1,260 people. *Id.* It alleges that one of those offices, in Irving, is Gartner’s fourth-largest office in the United States. *Id.* It alleges that the Irving office “serves as a hub” for Gartner’s Global Technology Sales and Global Business Sales divisions, and that Gartner maintains an “important presence” there. *Id.* The Amended Complaint also alleges that Gartner is registered to do business in Texas and pays franchise taxes in Texas. *Id.*

Gartner is a large organization with operations throughout the globe. Ex. 1, Riley Decl., ¶¶ 4–6.<sup>3</sup> Gartner has 106 different offices, spread all across the world, with offices in 15 different states in the United States and a worldwide workforce of 16,549 people. Riley Decl., ¶ 6. Gartner generated approximately 4% of its revenue in Texas last year. *Id.* at ¶ 5. Gartner’s Irving office is smaller than Gartner’s headquarters in Stamford, and it is also smaller than Gartner’s offices in Fort Myers, Florida and Arlington, Virginia. Ex. 2, Riley Supp. Decl., ¶ 9.

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<sup>3</sup> Gartner has submitted six declarations in support of this motion: the Declaration and Supplemental Declaration of John W. Riley, Gartner’s Group Vice President, Internal Audit and Risk (“Riley Decl.” and “Riley Supp. Decl.”), the Declaration and Supplemental Declaration of George Walden, Aon’s Resident Managing Director (“Walden Decl.” and “Walden Supp. Decl.”), the Declaration of Claudia Kaufman, a Vice President at Aon (“Kaufman Decl.”), and the Declaration of Brett Roman (“Roman Decl.”). These declarations offer proof of jurisdictional facts and may be considered by the Court on a motion to dismiss under Rule 12(b)(2). *See Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002). For clarity, this brief will reference the declarations by their short titles.

**B. Facts Relevant to Specific Jurisdiction**

As Gartner demonstrated in its initial motion to dismiss, the Gartner Policy was not negotiated, brokered, purchased, or delivered in Texas. ECF 11 at 6–9. The Amended Complaint concedes much of these facts, but contains a single, conclusory allegation that Gartner’s broker in New York, Aon/Albert G. Rubin Insurance Services (“Aon”), negotiated the terms of the Policy with USSIC. ECF 23 at ¶ 14. That allegation is false: as the attached declarations show, Aon negotiated only with HCC Specialty Underwriters, Inc., (“Specialty Underwriters”), a company incorporated and headquartered in Massachusetts,<sup>4</sup> and not with USSIC. Ex. 3, Walden Decl., ¶¶ 8–9; Ex. 4, Walden Supp. Decl., ¶ 5. The Amended Complaint concedes as much: it accurately states that the Policy and similar past policies have been negotiated by Gartner’s brokers and USSIC’s Massachusetts-based affiliate, Specialty Underwriters. ECF 23 at ¶ 11. In considering whether the plaintiff has made a *prima facie* case of personal jurisdiction, the Court need only credit “*uncontroverted* allegations” in the Amended Complaint. *See E. Concrete Materials, Inc. v. ACE Am. Ins. Co.*, 948 F.3d 289, 297 (5th Cir. 2020) (emphasis added).

Before the Policy took effect, there were no communications between Gartner or Aon and USSIC (or any of its affiliates) in Texas, and Gartner played no role in Specialty Underwriters’ decision to issue the Policy under USSIC’s name. Riley Decl., ¶¶ 9, 11; Walden Decl., ¶¶ 11–13. Specialty Underwriters (not USSIC) issued the Policy in Massachusetts and delivered it to Gartner in New York, by sending the Policy to Aon. Riley Decl., ¶ 14; Walden Decl., ¶ 15. Again, the Amended Complaint concedes this, noting that Specialty Underwriters has been authorized since 2002 to issue event cancellation policies on USSIC’s behalf. ECF 23 at ¶ 11.

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<sup>4</sup> *See* Ex. 5, Roman Decl., Ex. A.



USSIC did not bill Gartner for the policy premium; instead, Specialty Underwriters sent invoices for the policy premium to Aon in New York. Riley Decl., ¶ 12; Walden Decl., ¶ 14. Aon forwarded the bills to Gartner's headquarters in Connecticut; Gartner sent Aon the required payments; and Aon, in turn, sent the premium payments from New York to Specialty Underwriters in Massachusetts. Riley Decl., ¶ 12; Walden Decl., ¶ 14. The Amended Complaint alleges that USSIC's name appeared on the premium invoices, but notably does *not* allege that the invoices were issued by USSIC in Texas or that any payments were made to USSIC or anyone else in Texas. ECF 23 at ¶ 12.

The Amended Complaint misleadingly claims that Gartner has had a business relationship with USSIC for fifteen years. ECF 23 at ¶¶ 9, 12, 22. In fact, as the Amended Complaint concedes elsewhere, USSIC has only been involved in the insurance of Gartner's events since 2016, ECF 23 at ¶ 11, and it is uncontested that even that involvement is solely a result of Specialty Underwriter's unilateral decision to assign the policies to USSIC, a decision in which Gartner played no role. Riley Decl., ¶ 9; Walden Decl., ¶ 12.

Gartner did not reach out to or interact with anyone at USSIC regarding the drafting, negotiation, or issuance of the Policy. USSIC alleges that two of its Texas-based officers, Michael J. Schell (its CEO) and Alexander Ludlow (its Secretary), "executed and attested" the Policy after it was drafted, negotiated, and agreed upon by Specialty Underwriters, Gartner, and Aon. ECF 23 at ¶ 12. But there is no allegation that these Texas-based officers had any involvement in the negotiation, drafting, issuance or delivery of the Policy, although their pro forma signatures were stamped on the Policy. Mr. Schell and Mr. Ludlow did not communicate at any point with Gartner or Aon about the Policy and its issuance, and as far as Gartner is aware played no role in the development of the Policy. Walden Supp. Decl., ¶ 5; Riley Supp. Decl., ¶ 4. Further, contrary to

the allegations made on information and belief in the Amended Complaint, Mr. Walden was not aware—and neither was anyone else at Aon or Gartner—that the Policy was “issued and based on authority” provided to Specialty Underwriters from Texas, ECF 23 at ¶ 12; Gartner and Aon interacted only with Specialty Underwriters in Massachusetts, who did not disclose that the Policy needed final approval from anyone in Texas, if that was in fact the case. *See* ECF 23 at ¶ 12; Riley Supp. Decl., ¶ 5; Walden Supp. Decl., ¶ 2.

In early 2020, the COVID-19 public health emergency began forcing the cancellation of Gartner’s shows. Riley Decl., ¶ 16; Walden Decl., ¶ 17. Because the cancellation of events due to the actual or suspected outbreak of a communicable disease is expressly covered by the Gartner Policy, Gartner directed Aon to notify Specialty Underwriters of Gartner’s claims. Riley Decl., ¶ 16; Walden Decl., ¶ 18. As required by the Policy, Aon sent notices of claims to Specialty Underwriters in Massachusetts, not to USSIC. Riley Decl. ¶¶ 15–16; Walden Decl., ¶¶ 19–20. Specialty Underwriters named Hyperion Adjusters Ltd. of London, England (“Hyperion”) as the adjuster, and Specialty Underwriters notified Aon and Gartner that Hyperion would address Gartner’s claims. Riley Decl., ¶ 17; Walden Decl., ¶ 21. Thereafter, from February through May, 2020, Hyperion and Specialty Underwriters, on one hand, and Aon and Gartner, on the other, exchanged communications concerning Gartner’s claims and the Gartner Policy. Riley Decl., ¶ 18; Walden Decl., ¶ 22. As the widening scope of the COVID-19 pandemic became evident, Gartner notified Specialty Underwriters that, as provided in the Policy, Gartner desired to “reinstate” the aggregate limit of coverage under the Policy so that the Policy would provide an annual aggregate of \$300,000,000 in coverage for 2020, and Gartner repeatedly asked Specialty Underwriters to acknowledge that the limit had been reinstated. Riley Decl., ¶ 19; Walden Decl., ¶ 25.

USSIC was not involved in the discussions over Gartner's claims or the Policy's coverage. The Amended Complaint concedes this by alleging that the communications took place between Mr. Walden and Michael Thompson and Lorna Gillespie, both employees of Specialty Underwriters based in Massachusetts. ECF 23 at ¶ 19.<sup>5</sup>

Specialty Underwriters responded to Gartner's claims by unreasonably refusing to acknowledge coverage, and instead demanding that Gartner provide unnecessary and burdensome documentation. Walden Decl., ¶¶ 26–28. As described in the Amended Complaint, when Specialty Underwriters did not respond to Gartner's notification that it wished to reinstate the policy limits in accordance with the terms of the Policy, Mr. Walden repeatedly asked Specialty Underwriters for its coverage position. ECF 23 at ¶ 19; Riley Decl., ¶¶ 20–21; Walden Decl., ¶¶ 26–27. Then, on May 13, 2020, Specialty Underwriters notified Aon that Gartner's request to reinstate the limit was “**premature**,” but that Specialty Underwriters would reveal its coverage position in 14 days. Riley Decl., ¶ 21; Walden Decl., ¶ 28 & Ex. A. On May 27, 2020, exactly 14 days later, Specialty Underwriters advised Gartner, for the first time, of its position that Gartner has no right of reinstatement. Walden Decl., ¶ 29 & Ex. B. Anticipating that this unjustified position would cause Gartner to seek a judicial determination, on the very same day, May 27, USSIC filed this lawsuit against Gartner.

The only connection the Policy itself has to Texas is that it was issued under USSIC's name, and USSIC maintains its principal place of business in Houston. There is no allegation that the Policy was issued in Texas—and the Amended Complaint can fairly be read to say that the

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<sup>5</sup> Confusingly, in that same paragraph, the Amended Complaint alleges that Mr. Walden asked USSIC (rather than Specialty Underwriters) for a coverage opinion in April 2020: that allegation is false, and is contradicted not only by USSIC's remaining allegations, but also Mr. Walden's and Ms. Kaufman's declarations. Walden Decl., ¶¶ 22–23; Exh. 6, Kaufman Decl., ¶ 2.

Policy was issued in *Massachusetts*. See Am. Compl., ¶ 11. In fact, the word “Texas” appears only once in the Policy—in the address of USSIC shown on the cover page. ECF 23-1 at 2. The Policy itself expressly states in bold that its rates and forms “must meet the minimum standards of the *New York* insurance laws and regulations” (emphasis added). *Id.* at 3. Under the Policy, all notices to the insured of “renewal, cancellation, amendments, modifications, or endorsements” must be sent to Gartner in *Connecticut*. *Id.* at 4. The Policy provides that Gartner must send notices of claims not to USSIC in Texas, but rather to Specialty Underwriters in *Massachusetts*. *Id.* at 13; Walden Decl., ¶ 19. Specialty Underwriters has appointed Hyperion, in *England*, to be its claims adjuster. Walden Decl., ¶ 21.

#### IV. ARGUMENT

##### A. THIS COURT LACKS PERSONAL JURISDICTION OVER GARTNER

This Court may assert personal jurisdiction over a non-resident defendant only if the Texas long-arm statute confers jurisdiction, and the exercise of that jurisdiction is consistent with the Fourteenth Amendment’s Due Process clause. *Johnston v. Multidata Sys. Intern. Corp.*, 523 F.3d 602, 609 (5th Cir. 2008). Because Texas’s long-arm statute is co-extensive with the U.S. Constitution, the inquiry before this Court is whether the exercise of personal jurisdiction over Gartner in this case comports with the Due Process clause. See *Diece-Lisa Indus., Inc. v. Disney Enterprises, Inc.*, 943 F.3d 239, 249 (5th Cir. 2019).

Under the Due Process clause, a court may exercise personal jurisdiction over an out-of-state defendant such as Gartner only when that defendant has certain minimum contacts with the forum, and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918–19 (2011) (citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). There are two

types of personal jurisdiction: general personal jurisdiction and specific personal jurisdiction. *Id.* Neither is present in this case.

**1. Gartner is not Subject to General Personal Jurisdiction in Texas.**

General or all-purpose personal jurisdiction only exists where a party's contacts with a particular forum are "so continuous and systematic as to render them essentially at home" there. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (internal quotation marks omitted). Where general personal jurisdiction exists, a defendant is subject to suit by any person on any cause of action in that forum, regardless of the relationship between the suit and the forum state. *Id.* at 121.

For a corporation, the United States Supreme Court has directed that general personal jurisdiction ordinarily exists only in its state of incorporation and, if different, its principal place of business. *Id.* at 136–37. In *Daimler*, the Court explained that only in an "exceptional" case could a corporation's contacts with a forum other than its place of incorporation or principal place of business be sufficient to render it at home there. *Id.* at 139, n. 19. The Fifth Circuit recently emphasized that under *Daimler*, it is "incredibly difficult to establish general jurisdiction in a forum other than the place of incorporation or principal place of business." *Frank v. P N K (Lake Charles) L.L.C.*, 947 F.3d 331, 336 (5th Cir. 2020).

As the Amended Complaint alleges, Gartner is incorporated in Delaware and its principal place of business is in Stamford, Connecticut. ECF 23 at ¶ 7. Absent exceptional circumstances, it follows that Gartner is only subject to general personal jurisdiction in Delaware and Connecticut. No exceptional circumstances are alleged in the Amended Complaint, and none exist in this case.

In its attempt to accomplish the "incredibly difficult" task of establishing general jurisdiction over Gartner outside of the paradigmatic locations, *see Frank*, 947 F.3d at 336, USSIC points to just three facts: Gartner has three offices in Texas, including its fourth-largest U.S. office

in Irving (where Gartner allegedly has a “hub” of operations); it is registered to do business in Texas; and it pays franchise taxes in Texas.

Gartner’s three Texas offices do not render Gartner “at home” in Texas. Gartner is a large organization with over 100 offices around the world, including in 15 different states in the United States. Riley Decl., ¶ 6. Gartner’s senior management is based in its Stamford, Connecticut headquarters. Riley Supp. Decl., ¶ 8. Less than 8% of Gartner’s worldwide workforce of 16,549 works in Texas. Riley Decl., ¶ 6. Gartner’s Texas offices generate a small share of its revenue: Gartner earned only approximately 4% of its revenue in Texas last year. *Id.* at ¶ 5. The Amended Complaint recognizes that the Irving office is only the fourth-largest in the United States. ECF 23 at ¶ 7. Gartner has larger offices in three other states: Connecticut, Florida, and Virginia, as well as in two foreign countries: the United Kingdom and India. Riley Supp. Decl., ¶ 9. The Texas offices do not determine what events Gartner stages, or the scheduling or cancellation of events. *Id.* at ¶ 8. Gartner’s senior management in Connecticut determined whether it was necessary to cancel or postpone events due to the COVID-19 pandemic. *Id.*

The Supreme Court has stressed that “a corporation that operates in many places can scarcely be deemed at home in all of them.” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (“*BNSF*”) (quoting *Daimler*, 571 U.S. at 139, n. 20). In assessing general jurisdiction, courts must evaluate the defendant’s contacts in the context of “a corporation’s activities in their entirety.” *Id.* In *BNSF*, the Court held that the defendant railroad company was not subject to general personal jurisdiction in Montana, despite having over 2,000 miles of track in Montana, employing over 2,000 people there, and generating approximately 10% of its revenue in Montana. *Id.* The Court reasoned that BNSF, a Delaware corporation with its principal place of business in Texas, was not

“so heavily engaged in activity in Montana ‘as to render [it] essentially at home’ in that State.” *Id.* at 1554, 1559 (quoting *Daimler*, 571 U.S. at 139) (alteration in original).

Similarly, the Southern District of Texas, applying *Daimler*, recently held that a defendant insurance company was not subject to general jurisdiction in Texas despite numerous contacts with the state. *See Wartsila N. Am., Inc. v. Int’l Ctr. for Dispute Resolution*, 387 F. Supp. 3d 715, 731 (S.D. Tex. 2018). The defendant insurance company had its regional headquarters in Texas, was licensed in Texas, had its insurance rates and policies approved by the State of Texas so that it could issue policies to Texas citizens, employed a large number of Texas citizens, and conducted a significant portion of its overall business in Texas. Nonetheless, the court reasoned those contacts were insufficient to confer general jurisdiction because the defendant was neither incorporated nor maintained its principal place of business in Texas. *Id.* (holding these contacts do not amount to “the *exceptional* type of case discussed by the *Daimler* court”) (emphasis in original); *see also Garcia Hamilton & Assocs., L.P. v. RBC Capital Markets, LLC*, No. 4:19-CV-4141, 2020 WL 3078330, at \*5 (S.D. Tex. June 10, 2020) (relying on *BNSF* and *Daimler* to conclude no general jurisdiction existed over multi-state corporation with four offices and 250 employees in Texas, as well as entire division dedicated specifically to business in Texas); *Aziz v. MMR Grp., Inc.*, No. CV H-17-3907, 2018 WL 3439637, at \*4 (S.D. Tex. July 17, 2018) (no general jurisdiction over Louisiana company with four permanent locations and multiple employees in Texas).

Gartner’s presence in Texas is smaller than its presence not only in Connecticut, but also in Virginia and Florida. If Gartner were subject to general jurisdiction in Texas, it would necessarily also be subject to general jurisdiction in Florida and Virginia as well. Such a conclusion cannot be reconciled with the Supreme Court’s admonition that general jurisdiction

only exists outside the paradigmatic locations in an “exceptional case.” *Daimler*, 571 U.S. at 139 n. 19; *see also BNSF*, 137 S. Ct. at 1560 (Sotomayor, J. concurring in part and dissenting in part) (“Under [the Supreme Court’s] reasoning, it is virtually inconceivable that [multistate or multinational] corporations will ever be subject to general jurisdiction in any location other than their principal places of business or of incorporation.”). Indeed, by the logic apparently urged by USSIC here, any large national corporation would be subject to general jurisdiction in any state where it does a portion of its business. The Supreme Court specifically rejected this argument as “unacceptably grasping” in *Daimler*. 571 U.S. at 138.

That Gartner appointed an agent for service of process in Texas, as alleged in ¶ 7 of the Amended Complaint, is likewise insufficient to establish general jurisdiction over Gartner in Texas. Texas courts have repeatedly held that registering to do business in the State, and appointing an agent for service of process, do not constitute consent to jurisdiction or otherwise establish general personal jurisdiction. *See Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 429 (5th Cir. 2005) (“the registration of an agent for receipt of process does not establish general jurisdiction”); *Akerblom v. Ezra Holdings Ltd.*, 848 F. Supp. 2d 673, 690 (S.D. Tex. 2012), *aff’d*, 509 F. App’x 340 (5th Cir. 2013) (“service on the corporate representative is insufficient to confer personal jurisdiction”). Similarly, that Gartner pays franchise taxes in Texas does not render it “at home” for general jurisdiction purposes. *See Bowles v. Ranger Land Sys., Inc.*, 527 F. App’x 319, 321 (5th Cir. 2013) (no general jurisdiction over defendant who paid franchise taxes in Texas, in addition to having Texas-based employees).

This Court does not have general personal jurisdiction over Gartner.

## **2. Gartner is also not subject to Case-Specific Personal Jurisdiction.**

Specific personal jurisdiction only exists where the plaintiff’s claim “arises out of or relates to the defendant’s contacts with the forum.” *Daimler*, 571 U.S. at 127 (citing *Helicopteros*



*Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, n. 8 (1984)). The Fifth Circuit applies a three-step analysis to determine whether specific personal jurisdiction exists:

(1) whether the defendant has minimum contacts with the forum state, i.e., whether it purposely directed its activities toward the forum state or purposefully availed itself of the privileges of conducting activities there; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable.

*E. Concrete Materials, Inc. v. ACE Am. Ins. Co.*, 948 F.3d 289, 296 (5th Cir. 2020) ("*Eastern Concrete*"). A plaintiff asserting case-linked jurisdiction bears the burden of establishing both that the out-of-state defendant purposefully directed its activities toward the forum state and that the cause of action arises from those forum-related contacts. *Id.* USSIC cannot possibly meet this burden.

The Fifth Circuit's opinion in *Eastern Concrete* provides useful instruction on how these factors should be applied in a case like this one: an action by a Texas insurer against an out-of-state insured seeking a declaratory judgment on disputed terms of an insurance policy. In *Eastern Concrete*, the Fifth Circuit affirmed the exercise of specific jurisdiction, but it did so on the basis of facts that are strikingly different from the facts here.

In *Eastern Concrete*, the insurer plausibly alleged that officers of the insured who were residents of Texas had procured the disputed policy in Texas. 948 F.3d at 296. Both of these corporate officers worked "a short drive from the courthouse," and one of them had "'unlimited' authority over the insurance issues in dispute." *Id.* at 299. The insurer also alleged that the insured had engaged or authorized the engagement of an insurance broker "licensed by and operating within the State of Texas" to negotiate and procure the policy. *Id.* at 297. The disputed policy "contained many Texas-specific features," including 46 endorsements "every one of which lists Texas as the relevant state," with no endorsements referring to any other state. *Id.* at 296. The policy also directed the insured to contact the Texas Department of Insurance if complaints arose.

*Id.* After the claim arose, the insured’s Texas broker pursued coverage under the disputed policy. *Id.* at 298.

These pivotal factors, which the Fifth Circuit reasoned justified the assertion of case-specific personal jurisdiction in *Eastern Concrete*, lead to the opposite conclusion in this case. As with all of Gartner’s event cancellation policies since late 2007, the Policy at issue in this case was procured by Gartner’s New York broker from Specialty Underwriters in Massachusetts, which conducted the negotiations on behalf of itself or its affiliates, including USSIC. Walden Decl., ¶ 6. The Amended Complaint concedes as much. ECF 23 at ¶ 11. Specialty Underwriters is a Massachusetts Corporation with a principal place of business in Massachusetts. Roman Decl., Ex. A. Specialty Underwriters issued the Gartner Policy and delivered it to Gartner through Aon in New York. Riley Decl., ¶ 14; Walden Decl., ¶ 15. The Amended Complaint acknowledges that Specialty Underwriters is authorized to “issue policies” on its behalf. ECF 23 at ¶ 11. Invoices for premiums went from Specialty Underwriters in Massachusetts to Aon in New York, and premiums were paid to Specialty Underwriters in Massachusetts, not to USSIC in Texas. Riley Decl., ¶ 12; Walden Decl., ¶ 14. Gartner took no actions of any kind in Texas to procure the Policy and had no role in Specialty Underwriters’ decision to place the Policy with USSIC. Riley Decl., ¶¶ 9, 11; Walden Decl., ¶¶ 12–13. The Gartner Policy uses the word “Texas” only once, as the insurer’s address; it is explicitly tied to the laws of New York; and it provides for claims to be submitted in Massachusetts. ECF 23-1 at 2, 3, 13. When Gartner’s claims began to arise, Gartner’s New York broker submitted them to Specialty Underwriters in Massachusetts, as required by the Policy.<sup>6</sup> Walden Decl., ¶¶ 19–20.

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<sup>6</sup> The Amended Complaint alleges in ¶ 19 that Aon requested a coverage opinion from USSIC in April 2020 and that “USSIC responded.” That allegation is directly contradicted by Mr.

Gartner did not authorize anyone in Texas to procure the Policy; none of the negotiations of the terms of the Policy took place with anyone in Texas; Gartner did not remit its premium payments to Texas; Gartner’s coverage claim has been pursued in Massachusetts by its New York-based broker; and there is nothing about the Gartner Policy that could in any way reasonably be described as “distinctively Texan.” *Contrast Eastern Concrete*, 948 F.3d at 298. In light of these facts, Gartner is not subject to specific personal jurisdiction in this case.

**a. This suit does not arise out of, and is not related to, any contacts between Gartner and Texas.**

Gartner does not deny that it does business and has operations in Texas. But none of Gartner’s employees in Texas were involved in the negotiation or purchase of the Policy, in decisions regarding the cancellation of insured events, or in the pursuit of coverage from USSIC. Riley Supp. Decl., ¶ 8. An examination of Gartner’s suit-related conduct reveals no connection to Texas. *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (“For a State to exercise jurisdiction consistent with due process, the defendant’s *suit-related* conduct must create a substantial connection with the forum State.”) (emphasis added); *see also McFadin v. Gerber*, 587 F.3d 753, 759 (5th Cir. 2009) (“specific personal jurisdiction is a claim-specific inquiry”).

The allegations in the Amended Complaint that attempt to manufacture a connection between this suit and Texas fail to demonstrate the required nexus between “the defendant, the forum, and the litigation.” *See Walden*, 571 U.S. at 284. That nexus must result from the defendant’s purposeful availment of the forum’s laws and protections; purposeful availment is the “constitutional touchstone” of the specific personal jurisdiction inquiry. *See Carmona v. Leo Ship*

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Walden’s sworn affidavit, Walden Decl. ¶¶ 13, 23, and is contradicted by the Amended Complaint itself within the very same paragraph. *See* ECF 23 at ¶ 19 (conceding that Aon communicated with Michael Thompson and Lorna Gillespie, employees of Specialty Underwriters based in Massachusetts).

*Mgmt., Inc.*, 924 F.3d 190, 195 (5th Cir. 2019). USSIC appears to believe that for purposes of specific personal jurisdiction, it is sufficient if USSIC shows that Gartner purchased a Policy that bears USSIC's name—even though Gartner never dealt with USSIC or did anything in Texas during the negotiation or procurement of the Policy or in seeking coverage for its massive COVID-19 losses before USSIC brought suit. Under this theory, when coverage disputes arise USSIC could hale into court in Texas any of its policyholders, no matter where they may be found, even if they never dealt directly with USSIC or took any action in Texas to procure their policies. There is no conceivable basis for such an argument. *See Walden*, 571 U.S. at 284 (relationship between defendant and forum “must arise out of contacts that the defendant *himself* creates with the forum State”) (emphasis in original) (internal quotation marks omitted).

The Amended Complaint alleges that USSIC has been the issuer of the event cancellation policies that Gartner has procured from Specialty Underwriters since 2016, but it acknowledges that the policies were actually issued by Specialty Underwriters in Massachusetts. ECF 23 at ¶ 11. The Amended Complaint also alleges that the Policy was “executed and attested” by USSIC's officers in Texas, and that Specialty Underwriters requested approval from USSIC in Texas for the schedule of insured events. *Id.* at ¶¶ 12, 16. These allegations completely miss the mark: they relate to what USSIC and Specialty Underwriters allegedly have done. The salient question for purposes of specific personal jurisdiction is what actions *Gartner* purposefully directed to Texas with respect to the matters in controversy. The contacts USSIC and Specialty Underwriters have with Texas are beside the point. *See Walden*, 571 U.S. at 284 (“We have consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.”); *see also Helicopteros Nacionales*, 466 U.S. at 417 (“[The] unilateral activity of another party or a third person is not an

appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.”).

It is undisputed that USSIC only became involved because Specialty Underwriters assigned the Policy to USSIC. Riley Decl. ¶ 9; Walden Decl. ¶¶ 11–12. Because Gartner had no control over where the Policy was assigned by Specialty Underwriters, that assignment and the actions USSIC took in response are not relevant to the jurisdictional inquiry. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (Due Process Clause requires that defendants be able to “structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit”); *see also Am. Gen. Life Ins. Co. v. Crosswhite*, No. CIV.A. H-09-1964, 2009 WL 3756956, at \*4 (S.D. Tex. Nov. 6, 2009) (“only the defendant's contacts with the forum are relevant, not the unilateral activity of another party or a third person”) (citing *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 575 (Tex. 2007)). Even if Gartner were aware that Specialty Underwriters would assign the Policy to USSIC, that would not change this analysis: mere awareness is not purposeful availment where Gartner played no part in the decision and had not control over where the Policy was assigned.<sup>7</sup> *See* Riley Decl., ¶ 9. As the Supreme Court has put it, “[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him.” *Walden*, 571 U.S. at 285.

Even if Gartner or its broker had reached out to USSIC directly to procure the Policy—which they did not—that would be insufficient to establish specific personal jurisdiction over

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<sup>7</sup> The Amended Complaint also alleges that Gartner contacted USSIC’s corporate parent in Texas in June 2020 – after this suit was filed. ECF 23 at ¶ 22. This suit obviously does not “arise out of” conduct that occurred after the suit was filed, *Bar Grp., LLC v. Bus. Intelligence Advisors, Inc.*, 215 F. Supp. 3d 524, 560 (S.D. Tex. 2017).

Gartner in Texas. As it said in *Freudensprung v. Offshore Tech. Servs., Inc.*, 379 F.3d 327, 344 (5th Cir. 2004), the Fifth Circuit

has repeatedly held that the combination of mailing payments to the forum state, engaging in communications related to the execution and performance of the contract, and the existence of a contract between the nonresident defendant and a resident of the forum are insufficient to establish the minimum contacts necessary to support the exercise of specific personal jurisdiction over the nonresident defendant.

*Accord Gulf Coast Bank & Tr. Co. v. Designed Conveyor Sys., L.L.C.*, 717 F. App'x 394, 399 (5th Cir. 2017) (“it is now well settled” that merely entering into a contract with an in-state party does not establish personal jurisdiction in that state).

The Supreme Court stressed in *Walden* that the analysis must look at “the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” 571 U.S. at 285. While the *Walden* Court recognized that a contract with an in-state plaintiff could serve as the basis for jurisdiction if the contract “envisioned continuing and wide-reaching contacts in the forum State,” *id.* (internal quotation marks omitted), the insurance policy at issue here does nothing of that kind. The Policy directs Gartner to notify Specialty Underwriters in Massachusetts of any claims that may arise under the Policy. ECF 23-1 at 13. While a few of the many listed insured events were scheduled to take place in Texas, the Policy’s event cancellation coverage is only triggered when these events are cancelled or postponed. Further, the Policy is controlled by New York law, and the location of loss and indemnity is Gartner’s headquarters in Connecticut. There is nothing about the Policy that can fairly be characterized as envisioning “continuing and wide-reaching contacts” in Texas. The only connection the Policy has to Texas is that USSIC happens to be based there. *See Garcia Hamilton & Assocs.*, 2020 WL 3078330, at \*6–7 (finding no specific jurisdiction where defendant’s “main contact” with Texas was “based on the fortuity that [plaintiff] happens to reside in Texas”); *contrast Eastern Concrete*, 948 F.3d at 298

(jurisdiction proper where insurance contract was “distinctively Texan” because it contained numerous Texas-specific features and endorsements).

The Amended Complaint also alleges that two of the insured events were scheduled to take place in Texas, and that those two shows “factored into the underwriting and calculation of premiums under the Policy,” as presumably did every other show in each of the other 20 U.S. and international locations covered by the Policy. ECF 23 at ¶ 15. The allegations regarding the Texas shows are of no consequence for two reasons. First, “[t]his is an insurance coverage dispute,” centered on the interpretation of the Policy language, not any occurrence in a particular location. *See Eastern Concrete*, 948 F.3d at 298. The Fifth Circuit held in a similar case that the relevant contacts are therefore those that “are linked to the procurement and enforcement” of the Policy. *Id.* Here, the procurement and enforcement took place in New York and Massachusetts. USSIC was not involved in any way in the negotiation or procurement of the Policy, and the intended locations of the insured shows are not relevant to the coverage claims at issue here. Second, even if the location of the insured risk were relevant, Texas is not that location. Only two of the more than 60 shows insured by the Policy were scheduled to take place in Texas. *See* ECF 23-1 at 21. Where the insured risks are located in multiple locations across the world, the place of performance of the insurance contract is where the premiums and indemnities are to be paid: here, in New York and Massachusetts. *See Houston Cas. Co. v. Certain Underwriters at Lloyd's London*, 51 F.Supp.2d 789, 797 (S.D. Tex. 1999) (place of performance of multi-risk insurance contract is location of payment of premiums and indemnities).

Under the controlling guidance from the Supreme Court and the Fifth Circuit, the exercise of specific personal jurisdiction here would violate the Due Process clause.

**b. The exercise of specific personal jurisdiction in this case would not be fair or reasonable.**

In determining whether the exercise of personal jurisdiction in this case would be unfair or unreasonable, the Court’s “primary concern” should be “the burden on the defendant”: *Gartner. Eastern Concrete*, 948 F.3d at 299 (quoting *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780 (2017)). There are at least three reasons why it would be unfair and unreasonable to assert jurisdiction over Gartner in this case. First, USSIC engaged in obvious, bad faith forum shopping by telling its insured that its coverage request was premature while at the same time preparing to file this action. Then USSIC filed this suit at exactly the same time Specialty Underwriters first notified Gartner that it was rejecting Gartner’s coverage position, and preventing Gartner—the natural plaintiff—from filing suit first in its preferred venue.<sup>8</sup> *See Integon Specialty Insurance Company v. Republic Plastics, Ltd.*, 2011 WL 13234744, at \*9 (W.D. Tex. 2011). Gartner is moving separately to dismiss USSIC’s anticipatory complaint on this basis, but USSIC’s underhanded tactics also underscore the unfairness of haling Gartner into court in Texas.

Second, nearly all of the witnesses for Gartner and its broker, Aon, are based in New York or Connecticut, over 1600 miles from Houston. Even the witnesses for the insurer who were involved in the Policy’s negotiation and delivery are nowhere near this courthouse: Specialty Underwriters is in Massachusetts. Especially in light of the serious health risks associated with air travel during the ongoing pandemic, requiring Gartner’s employees and third-party witnesses to fly to Texas to testify is unnecessarily burdensome. *Contrast Eastern Concrete*, 948 F.3d at 299

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<sup>8</sup> Curiously, when USSIC commenced its nearly identical action against Gartner on a second event cancellation policy in this district on the very same day, No 4:20-cv-1851, USSIC did not disclose to the Court that these are “related” cases. *Compare* Local Rule 5.2.



(finding exercise of jurisdiction fair and reasonable where defendant's primary witnesses lived and worked a short drive from the courthouse).

Third, it is not fair or reasonable for Texas to be the forum for an action on an insurance policy that was negotiated, brokered, and delivered in New York and presents issues of interpretation of a policy governed by New York law, not Texas law. *See* Restatement (Second) of Conflict of Laws § 188(2) (1971); *see also Houston Cas. Co.*, 51 F.Supp.2d at 797 (applying Restatement and finding place of performance of multi-risk insurance contract is location of payment of premiums and indemnities).

#### **V. CONCLUSION AND PRAYER**

For these reasons, USSIC has not established that Gartner is subject to this Court's jurisdiction: Gartner is not "at home" in Texas, and the events giving rise to this dispute did not occur in Texas. Gartner respectfully prays that the Court grant this motion, dismiss all claims against it in this matter, and grant it such other relief as it may be justly entitled.

July 24, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record for all parties via the Court's CM/ECF filing system on this 24<sup>th</sup> day of July, 2020.

/s/ Julie A. Hardin

Julie A. Hardin