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

MAURICE CHABUZ, EDWARD SMITH, MARIE-FRANCE SMITH, MADELINE MARSH, and WHITECAP INVESTMENT CORP. d/b/a PARADISE LUMBER	CASE NO. ST-13-CV-596
Plaintiffs,	ACTION FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, CONTRIBUTION, FRADULENT INDUCEMENT/ MISREPRESENTATION, and DECLARATORY JUDGMENT
vs.	
PUTNAM LUMBER & EXPORT COMPANY, PUTNAM FAMILY PROPERTIES, INC., GREAT SOUTHERN WOOD PRESERVING, INCORPORATED, MIKE NOBLE, XYZ CORPORATION, JOHN DOE, & JANE DOE	JURY TRIAL DEMANDED
Defendant.	

MEMORANDUM OPINION

THIS MATTER is before the Court on two separate motions to dismiss for lack of jurisdiction, as follows: 1) Defendant Great Southern Wood Preserving's ("Great Southern") Motion to Dismiss the Complaint, and 2) Defendant Great Southern Wood Preserving's Motion to Dismiss Cross-claims filed by Putnam Family Properties, Inc. and Putnam Lumber & Export Company. For the reasons set forth herein both motions to dismiss will be denied.

BACKGROUND

Plaintiffs Maurice Chabuz, Edward Smith, Marie-France Smith and Madeline Marsh own homes in St. John, Virgin Islands. Plaintiff Whitecap Investment Corp. d/b/a Paradise Lumber is a retail store on St. John, Virgin Islands. This case arises out of Defendants' alleged manufacture, production and distribution of defective wood products. The individual Plaintiffs purchased wood products from Plaintiff Whitecap Investment Corp, d/b/a Paradise Lumber ("Paradise Lumber") at its retail location in St. John.

Defendant Putnam Lumber and Export Company exports lumber outside the continental United States. Putnam bought wood treatment services and sometimes treated lumber from Great Southern. Great Southern is in the business of chemically treating wood to protect against premature rot and decay. The individual Plaintiffs allege the wood products they bought at Plaintiff Paradise Lumber, which Paradise bought from Putnam, were not properly treated, causing it to rot and decay without visible warning. Structures and properties built with the defective wood have become damaged and are unsuitable to rent or otherwise use.

Plaintiffs also allege Defendants knowingly sold wood products with inferior or substandard treatment to Virgin Islands customers to offset the high cost of shipping the products to the Virgin Islands and increase profit. Pl.s' Compl. ¶ 29. They further assert that Great Southern was not providing the wood treatment services it purported to be providing, and that Putnam knew it was not receiving the treatment services it was ordering.

ANALYSIS

In its Motions, Great Southern argues that this Court does not have personal jurisdiction over it because the Virgin Islands long arm statute does not provide for jurisdiction, and the Court's exercise of personal jurisdiction does not comport with the United States Constitution. Plaintiffs and Putnam oppose the Motion on grounds that this Court may properly exercise personal jurisdiction over Great Southern. Plaintiffs and Putnam also assert that collateral estoppel and res judicata bar Great Southern's Motion because Virgin Islands courts have uniformly denied Great Southern's motions asserting lack of personal jurisdiction in six (6) other cases.[1]

I. RES JUDICATA AND COLLATERAL ESTOPPEL

The term res judicata "actually comprise[s] two doctrines concerning the preclusive effect of a prior adjudication." 18 Charles Alan Wright et al., Federal

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[1] Of the six other cases, five were filed in the District Court of the Virgin Islands and one was filed in the Superior Court of the Virgin Islands. *See Belizaire v. Whitecap Investment Corp. d/b/a Paradise Lumber*, No. 2013-66, 2014 WL 793135 (D.V.I. Feb. 26, 2014) (slip copy); *Chapin v. Whitecap Investment Corp. d/b/a Paradise Lumber*, No. 2013-42 (District Court of the Virgin Islands); *MRL Development I, LLC v. Whitecap Investment Corp. d/b/a Paradise Lumber*, No. 2013-48, 2014 WL 128198 (D.V.I Jan. 14, 2014); *Stewart v. Whitecap Investment Corp. d/b/a Paradise Lumber*, No. 2012-28, 2013 WL 1163510 (D.V.I. Mar. 21, 2013) (slip copy) (D.V.I Mar. 21, 2013); *Whitecap Investment Corp. d/b/a Paradise Lumber v. Putnam Lumber and Export Co.*, No. 2010-139, 2013 WL 1155351 (D.V.I. Mar. 21, 2013); *Hills v. Whitecap Investment Corp. d/b/a Paradise Lumber*, No. ST-12-CV-395, 2013 WL 3185559 (Super. Ct. June 14, 2013).

Practice and Procedure § 4402 (2d ed. West 2014). The first doctrine, "claim preclusion," sometimes confusingly referred to as res judicata, refers to a judgment's effect in foreclosing litigation of matters that were not litigated in the prior suit, but should have been. *Hodge v. McGowan*, 29 V.I. 142, 147 (D.V.I. App. Div. Dec. 23, 1993). The second doctrine is "issue preclusion," also known as "collateral estoppel." Federal Practice and Procedure § 4402. "Collateral estoppel 'means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Gilbert v. People of the Virgin Islands*, 52 V.I. 350, (V.I. 2009) (quoting *Ashe v. Swenson*, 397 U.S. 436, 443 (1970)); *McGowan*, 29 V.I. at 147 ("[i]ssue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided").

Both claim preclusion and collateral estoppel require a final judgment in the prior litigation.[2] Plaintiffs and Putnam argue that the orders of the other six courts denying Great Southern's motions to dismiss for lack of personal jurisdiction are final judgments. It is a well-established common law principle, however, that such orders are not final judgments for res judicata purposes.[3] Therefore, the argument that the

[2] "To bind parties to a subsequent action to the outcome of a prior judgment pursuant to the principle of [claim preclusion[2]], it is required that (1) the prior judgment was valid, final, and on the merits; (2) the parties in the subsequent action are identical to or in privity with the parties in the prior action; and (3) the claims in the subsequent action arise out of the same transaction or occurrence as the prior claims. *Smith v. Turnbull*, 54 V.I. 369, 375 (V.I. 2010). "[A]n issue is conclusively established in future litigation through the doctrine of collateral estoppel only when it is determined by a final judgment. *Anderson v. C.I.R.*, 698 F.3d 160, 166 (3d Cir. 2012).

[3] *Virgin Islands v. Ward*, 55 V.I. 829, 839 (V.I. 2011) (describing order denying motion to dismiss as interlocutory in criminal action); *Rohn v. Gov't of Virgin Islands*, 47 V.I. 682, (V.I. 2006) (same); 15A Charles Alan Wright et al.,

defendants claims are barred by res judicata and collateral estoppel must fail. Therefore, the Court will now evaluate the merits of Great Southern's personal jurisdiction defense.

II. Personal Jurisdiction

Great Southern argues that this Court lacks personal jurisdiction over it because it does not have the constitutionally required minimum contacts with the United States Virgin Islands. Specifically, it asserts that it treated wood products in Georgia, delivered to its customers in Florida, and played no part in sending the wood products to the Virgin Islands. Plaintiffs argue that this Court may exercise personal jurisdiction over Great Southern with regard to the issues in this case, just as both the Superior Court of the Virgin Islands and the Federal District Court of the Virgin Islands have held in recent cases.

"Personal jurisdiction is the authority of a court to exercise jurisdiction over a party before it." *St. Croix, Ltd. v. Shell Oil Co.*, No. 2011-57, 2014 WL 235994, at *2 (V.I. Jan. 22, 2014). The Plaintiffs shoulder the burden of demonstrating a prima facie case for exercising personal jurisdiction over Great Southern. *Molloy v. Independence Blue Cross*, 56 V.I. 155, 172 (V.I. 2012). Under this standard, the Court must accept as true Plaintiffs' factual allegations that are supported by affidavits or

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Federal Practice and Procedure § 3914.6 (2d ed. West 2014) ("[o]rders refusing to dismiss an action almost always are not final").

other competent, admissible evidence, and all factual disputes will be decided in Plaintiffs' favor. *Id.* at 173.

The Virgin Islands have established a two-part test for determining whether a litigant is subject to personal jurisdiction. *Molloy*, 56 V.I. at 173 (citing *In re Najawicz*, 52 V.I. 311, 336 (V.I. 2009)). First, the Court evaluates whether the defendant is subject to personal jurisdiction under the Virgin Islands long arm statute, codified at V.I. Code Ann. tit. 5, § 4903. Id. Second, the Court must be satisfied that "the exercise of personal jurisdiction satisfies the requirements of due process." *St. Croix, Ltd.*, 2014 WL 235994, at *3.

"Once challenged, the burden of demonstrating the facts that establish personal jurisdiction falls on the plaintiff. *Belizaire v. Whitecap Inv. Corp.*, No. 2013-66, 2014 WL 793135, at *2 (D.V.I. Feb. 26, 2014) (quoting *Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324, 330 (3d Cir.2009)). The "court must take all allegations in the complaint as true and the plaintiff need only establish a prima facie case of personal jurisdiction." *Id.* (quoting *O'Connor v. Sandy Land Hotel Co.*, 496 F.3d 312, 316 (3d Cir.2007)).

A. Virgin Islands Long Arm Statute

The Virgin Islands long arm statute permits a court to "exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's[4]....

> (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 V.I.C. § 4903(a)(4).

Applying § 4903(a)(4), it is undisputed that Plaintiffs' claims arise from[5] the same conduct that would subject Great Southern to specific personal jurisdiction. Plaintiffs claim Great Southern sold defective wood products to Putnam, which in turn sold the products to Paradise Lumber, which in turn sold the lumber to Plaintiffs. Plaintiffs ascribe the wood's defective nature to Great Southern's failure to properly or sufficiently treat the wood with chemicals to prevent decay. Plaintiffs incorporated the wood products into their properties and their properties were

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[4] Section 4901 of Title 5 of the Virgin Islands Code defines a person as: "an individual, his executor , administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of this territory and whether or not organized under the laws of this territory." As a corporation, Great Southern is considered a person for purposes of § 4903.

[5] While "[n]o court in the Virgin Islands has determined what it means to 'arise from' the enumerated acts for the purposes of section 4903(b)" the Third Circuit, addressing a similar requirement under the constitutional jurisdiction doctrine of specific jurisdiction, defined the term as requiring the claim to reasonably relate to the cause of action. *Molloy*, 56 V.I. at 175 (citing *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 320 (3d Cir. 2007)).

damaged as a result. Therefore, they have sufficiently alleged that Great Southern caused a tortious injury in the Territory.

We must now consider whether Great Southern "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 V.I.C. § 4903(a)(4). "Substantial revenue" is a relative term, and is therefore only meaningful in some defined context. Part of that context are the special considerations of this jurisdiction, which has "a small population more than 1,000 miles away from any continent." *Hendrickson v. Reg O Co.*, 17 V.I. 457, 464 (D.V.I. 1980) *aff'd*, 657 F.2d 9 (3d Cir. 1981). Thus, "'substantial' must be interpreted by local Virgin Islands standards." *Id.*; *cf. Samad v. High Soc. Magazine*, 20 V.I. 554, 556 (D.V.I. 1984) (taking the nature and unit cost of defendant's product into account when determining whether revenue was "substantial" under § 4903(a)(4)). The ratio of a defendant's total sales to its local sales does not control the analysis. *Hendrickson*, 17 V.I. at 464; *Hendrickson v. Reg O Co.*, 657 F.2d 9, 13 (3d Cir. 1981) ("*Hendrickson II*") ("The substantiality of the revenues must be measured by objective factors, not the size of the defendant.").

Plaintiffs allege that between July 2003 and August 2009, Great Southern derived $2,083,953 in profit for services, including the treatment of wood sold in the Virgin Islands. Great South agrees that it received $2,083,953 in overall revenue from Putnam. But Putnam asserts that of that sum only $442,689.24 was paid Great Southern for lumber and treatment services for wood Putnam sold in the Virgin

Islands.[6] In its Reply, Great Southern does not dispute this figure, though it argues that it received no benefit from Putnam's decision to sell the wood products in the Virgin Islands and had no control over the destination of its products.

Great Southern's alleged revenue of $442,689.24 deriving from the sale of its products in the Virgin Islands is substantial. *Belizaire v. Whitecap Inv. Corp.*, No. 2013-66, 2014 WL 793135, at *4 (D.V.I. Feb. 26, 2014) (concluding Great Southern derived substantial revenue from the Virgin Islands based on Putnam's answers to interrogatories stating that out of over $2 million in total revenue from lumber sales to Putnam, Great Southern received $432,884.72 for lumber or treated lumber sold in the Virgin Islands).[7] Great Southern's assertion that it did not control the destination of its products and did not specifically intend for the products to be sold in the Virgin Islands is irrelevant to our long arm statute. Section 4903 requires only that the defendant "derives substantial revenue from goods used or consumed or services rendered" in this Territory. The statute's terms are objective; there is no subjective knowledge requirement. Great Southern's revenue generation from products sold into this jurisdiction is enough to satisfy the "substantial revenue" portion of § 4903(a)(4).

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[6] Putnam relies on its answers to interrogatories filed in *Stewart v. Whitecap Investment Corp. d/b/a Paradise Lumber*, Civil No. 2012-28, for this data.

[7] *See also MRL Dev. I, LLC v. Whitecap Inv. Corp.*, No. 2013-48, 2014 WL 128198, at *4 (D.V.I. Jan. 14, 2014); *Stewart v. Whitecap Inv. Corp.*, No. 2012-28, 2013 WL 1163510, at *4 (D.V.I. Mar. 21, 2013); *Whitecap Investment Corp. d/b/a Paradise Lumber v. Putnam Lumber and Export Co.*, No. 2010-139, 2013 WL 1155351, at *7 (D.V.I. Mar. 21, 2013); *Hills v. Whitecap Investment Corp. d/b/a Paradise Lumber*, No. ST-12-CV-395, at *2 (Super. Ct. June 14, 2013) (finding that Great Southern received substantial revenue based on similar amounts and similar evidence).

Finding jurisdiction proper under the Virgin Islands long arm statute, 5 V.I.C. § 4903, the Court must now determine whether exercising jurisdiction over Great South comports with the United States Constitution's due process clause.

B. Due Process

In the second half of the jurisdictional analysis, the Court must determine whether its exercise of jurisdiction over Great Southern comports with the Fourteenth Amendment's due process clause, which "limits the power of a state court to exert personal jurisdiction over a nonresident defendant." *Asahi Metal Indus. Co. v. Superior Court of California, Solano Cnty.*, 480 U.S. 102, 108 (1987).

There are two types of personal jurisdiction: general and specific. *Molloy*, 56 V.I. at 181. General jurisdiction is the broad power to hear all cases against a defendant based on the defendant's "continuous and systematic contact with the forum." *Id.* Specific jurisdiction, a narrower type of authority, exists if the defendant has minimum contacts with the forum and the claim arises out of those contacts. *Id.*

In this case, the parties dispute whether the Court can exercise specific jurisdiction over Great Southern based on the Due Process analysis. The Virgin Islands applies a three-part test to determine whether specific jurisdiction exists. "First, the defendant must have purposefully directed its activities at the forum." *Molloy*, 56 V.I. at 183. Second, the litigation must arise out of or relate to at least one of those activities." *Id.* Third, jurisdiction must "not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945); *Molloy*, 56 V.I. at 181-82 (quoting *International Shoe*, 326 U.S. at 320). This test ensures "that the defendant has the requisite minimum contacts with a forum to receive 'fair warning' that the defendant may be haled into court in that forum." *Id.* at 183-84 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

Great Southern is a corporation organized under the laws of Alabama with a principal place of business in Alabama. It maintains that it did not direct any activities to the Virgin Islands, and any alleged contacts were through Putnam, a third party. Conversely, Plaintiffs and Putnam argue that Great Southern sought out Putnam as a client specifically because it exports a high volume of lumber outside the United States.

Contrary to Great Southern's assertion, there is evidence that it purposefully directed its business at the Virgin Islands. As early as 2004, when Great Southern began doing business with Putnam, Great Southern understood Putnam's main business was exporting lumber outside the continental United States, and that a lot of the lumber went to the Caribbean. Deposition Transcript of Justin Wright and Deposition of Chad Blizzard, Exs. A and B to Putnam's Opposition to Great Southern's Motion to Dismiss. In addition to selling lumber to Paradise Lumber, where Plaintiffs purchased the defective wood, Putnam also sold lumber to MSI Building Supplies, a Virgin Islands lumber retailer, and possibly sold wood products to other Virgin Islands retailers.[8] Deposition Transcript of Rourke, Ex. D to Plaintiffs' Opp. to Great Southern's Motion to Dismiss.

In assessing Great Southern's intent, the Court notes that a Great Southern employee emailed a Putnam employee at least twice regarding the Virgin Islands. On July 22, 2008, a Great Southern representative emailed Putnam explaining that "any material that goes over seas [sic] does not carry a warranty BUT we can help you out some with this issue. How many pieces is your customer talking about?" Email from Mike Simerly to Mike Noble, Ex. G to Plaintiffs' Opp. to Great Southern's Motion to Dismiss. Putnam responded:

> I'm not sure that the U.S. Virgin Islands is considered overseas. are [sic] you saying that the .15 treatment we bought on 5/4" decking which is approved in the United States is not covered in the United States Virgin Islands? would [sic] there be any reason it would disintegrate there and not here? Per our conversation, every piece of 5/4x6/16' RED treated was purchased from Great Southern and sold to our only client in St. John, U.S.V.I. what [sic] exactly are you saying before I ask these questions elsewhere?

Email from Mike Noble to Mike Simerly, Ex. G. to Plaintiffs' Opp. to Great Southern's Motion to Dismiss. On October 20, 2009, the same Great Southern representative emailed Putnam: "Do you have any TSO items in the works coming to Jesup or any stock items we can quote into Jax? Have you been loading any flat racks lately out of Jax, or are the islands still slow?" Email from Mike Simerly to Mike Noble, Ex. H to Plaintiffs' Opp. to Great Southern's Motion to Dismiss. This email demonstrates

[8] Plaintiffs assert that Putnam sold wood to Paradise Lumber "and other retailers, including MSI." However, Plaintiffs do not identify the alleged other retailers, and offer no evidence to support this assertion.

that Great Southern knew its products were being sold in the "islands" and that it was pursuing further opportunities with Putnam to distribute its products to the Virgin Islands.[9]

While questions linger as to precisely what Great Southern knew and when, the evidence indicates Great Southern knew from the outset that Putnam's main business was exporting lumber outside the United States, and that the Caribbean was one of its major markets. By the time of the Great Southern employee's July 2008 email to Putnam, Great Southern knew its products were being delivered to and consumed in the U.S. Virgin Islands. After the July 2008 email, from July 23, 2008 through August 3, 2009, Putnam submitted 92 additional purchase orders to Great Southern. Therefore, for at least that 13 month period, Great South was aware that its products were being consumed in the U.S. Virgin Islands.

The record also indicates that Great Southern had a business relationship with Conex Forest Products, Inc., a lumber exporter that also exported to the Caribbean, including the U.S. Virgin Islands. Great Southern, in partnership with Conex, advertised its product in the Bahamas and elsewhere in the Caribbean. Exs. E and F to Putnam's Opp. to Great Southern's Motion to Dismiss. Additionally, Conex employed a designated sales representative for the U.S. Virgin Islands. Deposition

[9] The email does not specify which "islands" the Great Southern employee was inquiring about. Plaintiffs and Putnam interpret "islands" as reference to the U.S. Virgin Islands and Great Southern offers no alternative explanation. Given the July 2008 email and Great Southern's lack of other interpretation, it is likely that "islands" refers to the U.S. Virgin Islands.

Transcript of Bradford Locke, Ex. G., and Deposition Transcript of Eric Sizemore, Ex. F to Putnam's Opp. to Great Southern's Motion to Dismiss.

Despite the above evidence showing that Great Southern directed itself at the Virgin Islands, Great Southern argues that the United States Supreme Court's decision in *Walden v. Fiore*, 134 S. Ct. 1115 (Feb. 25, 2014) should alter the personal jurisdiction analysis in this case.

In *Walden*, the defendant, a Georgia police officer, searched plaintiffs at an Atlanta airport, found $97,000 in cash, and seized the funds on suspicion that it was drug money. *Id.* The next day, Plaintiffs' Nevada attorney called the defendant seeking a return of the funds. *Id.* After receiving documentation as to the legitimacy of the money, the cash was returned to plaintiffs. *Id.* At some point after seizing the cash, the defendant police officer helped draft a probable cause affidavit to support the forfeiture of the funds, and he forwarded the affidavit to a United States Attorney's Office in Georgia. *Id.* Plaintiffs subsequently filed suit in the United States District Court for the District of Nevada. *Id.* at 1120. The Court held that "[b]ecause the defendant had no other contacts with Nevada, and because a plaintiff's contacts with the forum State cannot be "decisive in determining whether the defendant's due process rights are violated . . . the court in Nevada may not exercise personal jurisdiction under these circumstances. *Walden*, 134 S. Ct. at 1118. "Due process," the Court explains, "requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the "random, fortuitous, or attenuated" contacts he makes by interacting with other persons affiliated with the State. *Walden*, 134 S. Ct. at 1123 (citing *Burger King,* 471 U.S. at 475).

Great Southern argues therefore that it cannot be subject to jurisdiction in the Virgin Islands because its contacts with this jurisdiction are through Putnam, a third party. Although Great Southern's contacts were through third party distributors (Putnam and Conex), it is not automatically immune from prosecution in this jurisdiction.[10] Unlike the police officer defendant in *Walden*, Great Southern knowingly directed business to the Virgin Islands, and sought to serve the market there. Great Southern's Caribbean advertising campaign demonstrates that its contacts with the Virgin Islands were intentional, not "random, fortuitous, or attenuated." *Walden*, 134 S. Ct. at 1123. *See, e.g. Hill v. Whitecaop Investment Corp. d/b/a Paradise Lumber*, 2014 V.I. LEXIS 114, *9 (Super Ct.) (holding that *Walden* did not affect the stream of commerce strand of personal jurisdiction analysis while denying Great Southern's Motion to Dismiss for lack of personal jurisdiction).

The second specific jurisdiction factor looks to the connection between Plaintiffs' claims and Great Southern's contacts with the Virgin Islands. Plaintiffs'

[10] *See, e.g., Hill v. Whitecaop Investment Corp. d/b/a Paradise Lumber,* No. ST-12-CV-395, 2013 WL 3185559, at *4 (Super. Ct. June 14, 2013) ("Although Great Southern made the contacts with the forum state at issue here through a third party, personal jurisdiction is properly asserted by this Court."); *Renner v. Lanard Toys Ltd.,* 33 F.3d 277, 280 (3d Cir. 1994) ("[u]nderlying the assumption of jurisdiction in these cases is the belief that the fairness requirements of due process do not extend so far as to permit a manufacturer to insulate itself from the reach of the forum State's long-arm rule by using an intermediary or by professing ignorance of the ultimate destination of its products") (quoting *DeJames v. Magnificence Carriers, Inc.,* 654 F.2d 280, 285 (3d Cir. 1981); *Samad v. High Soc. Magazine,* 20 V.I. 554, 556 (D.V.I. 1984) ("Defendant does not insulate itself from liability in this jurisdiction merely by passing its publication through an independent distributor. High Society places its publication into the stream of commerce with the knowledge that a certain, not insignificant, number of copies will be sold within the jurisdiction. It thus engages in a "persistent course of conduct" within the meaning of 5 V.I.C. § 4903(a)(4)).

claims unquestionably arise out of Great Southern's contacts with the forum. They allege that Great Southern sold defective wood products to Putnam, which sold the wood to Paradise Lumber, a retailer in St. John, and that the defective wood damaged their properties. Therefore, this element is satisfied.

Finally, the third jurisdictional factor is itself a multi-faceted inquiry. To determine whether jurisdiction would offend traditional notions of fair play and substantial justice, the Court is guided by the following factors: "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Molloy*, 56 V.I. at 184 (citing *Burger King Corp.*, 471 U.S. at 477).

The burden on Great Southern is not particularly great at this juncture, as it has or is still defending itself in six other similar cases in this jurisdiction. Great Southern has provided wood treatment services and occasionally lumber to lumber exporting businesses. In doing so, Great Southern should expect that claims may arise in any of the far-flung places its treated lumber goes. Plaintiffs' interest in obtaining relief coincides with the judicial system's interest in efficiently resolving controversies because the damaged properties are located in this jurisdiction and some of the plaintiffs reside here. Therefore, exercising jurisdiction over Great Southern does not offend principles of fair play and substantial justice.

Having analyzed the due process part of this jurisdictional puzzle, the Court finds that its exercise of jurisdiction over Great Southern is consistent with due process.

CONCLUSION

This Court finds that Great Southern is subject to this Court's jurisdiction under the Virgin Islands long arm statute because Great Southern derives "substantial revenue" from the Virgin Islands. 5 V.I.C. § 4903(a)(4).

In addition, exercise of jurisdiction over Great Southern comports with the Fourteenth Amendment's due process clause. Therefore, Great Southern's motions to dismiss will be denied.

The Court will enter an Order consistent with this Opinion.

DATED: April 12, 2016

Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY:
LORI BOYNES TYSON
Court Clerk Supervisor 4/12/16