

TERRITORIAL COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX: KINGSHILL

	)	CASES NOS. 606/92; 608/92; 609/92
	)	611/92; 615/92; 629/92
IN RE:	)	632/92; 633/92; 634/92
	)	636/92; 638/92; 642/92
	)	644/92; 645/92; 646/92
	)	648/92; 649/92; 650/92
ST. CROIX SEAMEN'S ASBESTOS	)	653/92; 654/92; 656/92
CASES	)	657/92; 658/92; 661/92
	)	662/92; 665/92; 666/92
	)	672/92; 680/92; 681/92
	)	685/92; 687/92; 688/92
	)	694/92; 697/92; 699/92
	)	700/92; 701/92; 703/92

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GYPSUM COMPANY)

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SOUND TUG & BARGE COMPANY, STEUART TRANSPORTATION CO. SUCCESSOR IN INTEREST TO STEUART TANKERS CO., TEXAS CITY REFINING INC. ON ITS OWN BEHALF AND AS SUCCESSOR IN INTEREST BY MERGER TO TEXAS CITY CORP., TRANSOCEANIC CABLE SHIP CO. INC., WATERMAN STEAMSHIP CORP., ARCO MARINE, INC., AS SUCCESSOR IN INTEREST TO SINCLAIR REFINING CO., AND RICHFIELD OIL CO., CENTRAL GULF LINES STEAMSHIP, CONNECTICUT TRANSPORT, INC., ON ITS OWN BEHALF AND AS SUCCESSOR IN INTEREST TO MOHAWK SHIPPING INC., ISCO INC., SUCCESSOR IN INTEREST TO ISTHMIAN LINES INC., AND ISTHMIAN STEAMSHIP CO., LYKES BROS. STEAMSHIP CO. INC., MERRIMAC TRANSPORT INC., OMI BULK TRANSPORT, INC. AS SUCCESSOR IN INTEREST TO PECOS TRANSPORT INC., OGDEN SEA TRANSPORT INC. AND PLATTE TRANSPORT INC., OMI CHALLENGER TRANSPORT, INC., OMI CORP., ON ITS BEHALF AND AS SUCCESSOR IN INTEREST TO OGDEN MARINE/OMI CORP., a/k/a OGDEN MARINE INC., WABASH TRANSPORT, INC., AND ALBANY RIVER TRANSPORT INC., OMI HUDSON TRANSPORT INC., OMI MISSOURI TRANSPORT INC., OMI ROVER TRANSPORT INC., AS SUCCESSOR IN INTEREST TO PENN TANKER CORP., POTOMAC TRANSPORT INC., PUERTO RICO MARINE MANAGEMENT INC. ON ITS OWN BEHALF AND AS SUCCESSOR IN INTEREST TO PUERTO RICO MARINE OPERATING COMPANY INC., AND RIO GRANDE TRANSPORT INC.)

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PETERSEN, Senior Sitting Judge

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MEMORANDUM OPINION AND ORDER
(JUNE 18, 1993)

This Matter is before this Court on Defendants' Motion to Dismiss for Lack of Personal Jurisdiction. For the reasons stated herein, the Motion to Dismiss is Granted as to the following named defendants: AMERADA HESS CORPORATION, AMERICAN EXPORT LINES, INC., AMERICAN EAGLE TANKER CORPORATION, AMERICAN FOREIGN STEAMSHIP COMPANY, AMERICAN MAIL LINES, AMERICAN PRESIDENT LINES, LTD., AMERICAN TRADING TRANSPORTATION, INC., ANNDEP STEAMSHIP CORPORATION, CENTRAL GULF LINES, INC., CHARLES KURZ & COMPANY, INC., FARRELL LINES, INC., INTEROCEAN MANAGEMENT CORPORATION, INTERNATIONAL OCEAN TRANSPORT CORPORATION, KEYSTONE SHIPPING COMPANY, KEYSTONE TANKSHIP CORPORATION, MYSTIC STEAMSHIP CORPORATION, NATIONAL BULK CARRIER, INC., TEXACO, INC., TRANSOCEANIC CABLE SHIP COMPANY INC., UNION OIL COMPANY OF CALIFORNIA, ON ITS OWN BEHALF AND AS SUCCESSOR IN INTEREST TO PURE OIL COMPANY AND VICTORY REAL ESTATE DEVELOPMENT CORPORATION, AS SUCCESSOR BY MERGER TO MONTPELIER TANKER COMPANY, MONTICELLO TANKER COMPANY AND MOUNT VERNON TANKER COMPANY.

FACTS

On June 30, 1992, Plaintiffs filed 100 Complaints in the Virgin Islands Territorial Court on St. Croix on behalf of

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living and deceased Merchant Mariners. These complaints allege that the seamen were exposed to asbestos during their careers as sailors on American ships. Plaintiffs further allege that they suffer from numerous anatomical disorders, structural changes, various forms of cancer, various pulmonary diseases, cancerphobia, traumatic stressful fear of affliction and worsening of pneumoconiosis, as well as exacerbation of existing diseases.

The Defendants in these cases can be classified in three categories. The first category are the Shipowner Defendants (hereinafter "Shipowner Defendants"). Plaintiffs claim that the Shipowner Defendants maintained their vessels in an unsafe and unseaworthy condition. The second category of Defendants are the Shipbuilders (hereinafter "Shipbuilder Defendants") and Manufacturers of boilers, generators and other machinery installed in these vessels (hereinafter "Machinery Manufacturer Defendants"). Plaintiffs allege that the Shipbuilder and Machinery Manufacturer Defendants used asbestos insulation and asbestos products in their respective work on the vessels. The third category of Defendants are the Manufacturers of asbestos and asbestos products used on the ships (hereinafter "Asbestos Products Defendants").

Of the 100 actions initially filed here, 61 cases were removed to the United States District Court. These cases are

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awaiting a Conditional Transfer Order to be further removed to the Multidistrict Litigation panel where Judge Weiner will decide Plaintiffs' Motion for Removal and Defendants' Motion to Sever. Of the 39 cases which remain pending in this Court, there are approximately 52 Motions to Dismiss for Lack of Personal Jurisdiction on behalf of the Defendants. These motions argue that the Defendants have not had continuous and systematic contacts with the Virgin Islands. The Plaintiffs contend that the Defendant Shipowners' numerous portcalls to the Virgin Islands throughout the years allow this Court to exercise jurisdiction. Upon the Plaintiffs request, the Court held the Defendant shipowners' motion in abeyance pending discovery of additional jurisdictional facts. All parties have filed excellent supplemental briefs on the issue of jurisdiction.

DISCUSSION

The Plaintiffs contend that this Court has general jurisdiction over these seamen's asbestos cases. The Defendants counter that their contacts with the Virgin Islands were neither continuous nor systematic for the purpose of establishing personal jurisdiction. Where the defendant challenges the court's personal jurisdiction, the plaintiff bears the burden of proof on establishing jurisdiction. Wims v. Beach Terrace Motor Inn, Inc., 759 F.Supp. 264 (E.D. Pa. 1991). If the

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jurisdictional issue is decided on the pleadings before discovery, the plaintiffs need only provide evidence of a *prima facie* case for jurisdiction. Hvide Marine Intern v. Employers Ins. of WauSau, 724 F.Supp. 180 (S.D.N.Y. 1989). Some courts have held that if the plaintiffs have engaged in substantial discovery of jurisdictional issues, the stricter preponderance of evidence standard should be applied. General Elec. Credit v. Scott's Furniture Warehouse, 699 F.Supp. 907 (N.D. Ga. 1988). Even though Plaintiffs herein have had sufficient opportunity to discover additional jurisdictional facts, the Court will determine whether Plaintiffs have made a *prima facie* showing as to this Court's jurisdiction.

The issue of personal jurisdiction involves the power of the court to affect legal interests through its adjudicatory authority. Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290, (3d Cir. 1985). The primary consideration in jurisdictional inquiries is that of fundamental fairness to the defendant. De James v. Magnificence Carriers, Inc., 654 F.2d 280 (1981). cert. denied, 454 U.S. 1085 (1985). In the seminal case of International Shoe Co. v. Washington, 326 U.S. 310 (1945), the Supreme Court said that due process requirements are satisfied when the non-resident defendant has "certain minimum contacts with the [forum state] such that the maintenance of the suit does not offend traditional notions of fair play and justice".

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The Supreme Court in Hanson v. Denckla, 357 U.S. 235 (1958) stated that it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking "the benefits and protections of its laws". The Supreme Court also indicated that due process requires that a defendant have a reasonable expectation that the nature of its conduct might result in the defendant being "haled before a court" in the forum state. Shaffer v. Heifner, 433 U.S. 186 (1977); Kulko v. Superior Court, 436 U.S. 84 (1978). Mere foreseeability on the part of the defendant that its conduct might affect the forum state is too attenuated to constitute such a reasonable expectation. See World Wide Volkswagen v. Woodson, 444 U.S. 286 (1980).

In deciding whether or not to exercise personal jurisdiction over a non-resident defendant, the court must first determine whether jurisdiction exists under the forum state's long-arm jurisdiction statute. Van Buskirk v. Carey Canadian Mines, Ltd. 760 F.2d 481 (3d Cir. 1985). Then, the court must ascertain that this exercise of jurisdiction comports with the Due Process Clause of the Fourteenth Amendment to the Constitution. Id.

While constitutional arguments are usually considered only after the court has decided the statutory issues See Hagans v.

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Lavine, 415 U.S. 528 (1974), the language of the long-arm statute is deemed critical. Some state legislatures have expressly provided that the jurisdiction of the courts of the State extends to the limits of the Constitution. (See e.g. 42 Pa. Const. Stat. Ann. 5322(b) which permits the exercise of "personal jurisdiction to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with Pennsylvania"). Where the state's long-arm statute is broadly written, courts focus directly upon the constitutional due process requirements and not the precise statutory language. See e.g., Reliance Steel Prod. Co. v. Waston, Ess, Marshall and Engass, 675 F.2d 587, 588 (3d Cir. 1982). In a similar fashion, where a state judiciary has interpreted its long-arm statute to reach the full breadth of the Constitution, the statutory and constitutional inquiries merge into a constitutional analysis. Helicopteros Nacionales De Colombia, S.A. v. Hall, 466 U.S. 408 (1984); De James v. Magnificence Carriers Inc., 654 F.2d 280 (1981), cert. denied, 454 U.S. 1085 (1985)

While some local cases have construed the Virgin Islands Long-Arm Statute, 5 V.I.C. § 4903, to reach the full breadth of the constitution, See Norman's on the Water Front v. West Indies Corp., 10 V.I. 495 (D.V.I. 1974) ("The spirit of equality represented by Congress' decision to have the federal rules

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apply to this Court suggests that those rules should apply to their fullest extent and in the same manner as they would apply in the continental United States"); The Buccaneer Hotel Corp. v. Reliance International Sales Corp., 17 V.I. 249 (Terr. Ct. St.C. 1981); Carson v. Skandia Ins. Co., Ltd., 19 V.I. 138 (D.V.I. 1982), others have questioned whether the Virgin Islands Long-Arm statute coalesces with maximum constitutional limitations. See, Carty v. Beech Aircraft Corp., 679 F.2d 1051 (3d Cir. 1982) ("it may be that the District Court's statement that section 4903 is intended to extend the personal jurisdiction of the Virgin Islands 'to the widest constitutional limits' was intended to mean only that those provisions referring to the defendants' contacts with the forum would be interpreted in that manner. We leave that issue for another day ..."). See also Dennie v. Univ. of Pittsburgh School of Medicine, 21 V.I. 51 (D.V.I. 1984) aff'd without opinion, 770 F.2d 1068 (3d Cir. 1985) ("It has not yet been determined whether the range of the Virgin Islands long-arm statute is coextensive with the farthestmost reaches of the due process clause").

As Dennie is the Third Circuit's most recent definitive statement on the reach of 5 V.I.C. § 4903, this Court will adhere to Dennie's two step inquiry into the question of long-arm jurisdiction. The Court will first determine whether the exercise of jurisdiction is authorized by the terms of the

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statute, and only if the answer is in the affirmative, then second, whether the exercise of jurisdiction comports with the constitutional requirements of due process. Dennie, supra at 59.

The Virgin Islands Long-Arm Statute, 5 V.I.C. § 4903, was adopted from the Uniform Interstate and International Procedure Act, 13 Unif. L. Ann. § 1.03. It provides, in relevant part:

(a) A Court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a claim for relief arising from the person's

- (1) transacting any business in this territory
- (2) contracting to supply service or things in this territory
- (3) causing tortious injury by an act or omission in this territory
- (4) causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in this territory...

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

5 V.I.C. §4903(a)(1)-(4).

In order to find a factual basis for the assertion of personal jurisdiction based upon section 4903 of the Virgin Islands Long-Arm Statute, the Court must look to the allegations of fact found in Plaintiffs' complaints. An examination of these allegations demonstrates that Plaintiffs have failed to allege any acts on the part of the Defendants which could

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conceivably fall within the scope of the Long-Arm Statute.

4903(a)(1) authorizes the Court to exercise in personam jurisdiction if the defendant transacts any business within the territory. Transacting business requires a defendant to engage in some type of purposeful activity within the territory. See e.g., George Reiner and Co., Inc. v. Schwartz, 394 N.Y.S. 2d 844 (Ct. App. 1977). The Plaintiffs have not submitted any evidence that the various classes of Defendants transacted business in this territory. The Defendants are not registered to do business in the Virgin Islands. The Defendants have submitted uncontroverted affidavits stating that they have not entered into contracts, maintained an office or employees, or owned real estate in the Virgin Islands. Hence, jurisdiction cannot be supported by 4903(a)(1).

4903(a)(2) requires that the Defendants contract to supply services or things in this territory for the purpose of exercising personal jurisdiction. Norman's on the Waterfront v. West Indies Corp., supra, stated that this subsection requires (1) that the contract be entered into in the Virgin Islands; (2) that the goods be shipped to this territory; and (3) that the cause of action arise out of the contract. The Plaintiffs have not provided any *prima facie* evidence to substantiate any allegation that the various classes of Defendants actually supplied services or things to this territory. Thus, 4903(a)(2)

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is also inapplicable herein.

4903 (a)(3) allows the Court to exercise jurisdiction over Defendants if they caused tortious injuries by acts or omissions in this territory. In Carty v. Beech Aircraft Corp., supra, the Third Circuit discussed 4903(a)(3)'s "act or omission" requirement. Carty involved a wrongful death action brought against the non-resident manufacturers of an aircraft and its component parts by the personal representatives of passengers killed enroute to Anguilla from St. Maarten. The commuter airline serviced various Caribbean islands including the Virgin Islands. The District Court noted that it had two bases for jurisdiction under 4903(a)(3). First, the District Court, noting that the airline's principal place of business was in the Virgin Islands, held that "for the purposes of jurisdiction under a long arm statute, the location of a manufacturer's breach of its duty to warn occurs at the location of its product's purchaser". It thus concluded that the manufacturer's failure to warn was an "act of omission" that occurred within the territory. The District Court also held that the requirements of 4903(a)(3) are met by allegations that elements and conduct which significantly related to the injury occurred within the territory.

The Third Circuit Court of Appeals, however, reversed. Initially, the Court stated that no "traditional" act or

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omission occurred in the territory. It noted that "neither the aircraft nor its components which were allegedly defective were designed or manufactured in the territory, nor did the defendants repair or inspect them there". The Court of Appeals found that an act or omission cannot be based on the mere allegation of a failure to warn. It stated that the decision whether or not to warn is ordinarily made at the location of the manufacturer's or corporation's headquarters and not at the place of business of the customer. The Court of Appeals noted that to insist that the failure to warn travels with the product through countless jurisdictions would be to confuse the separate issues of personal jurisdiction and liability.

In these cases, Plaintiffs have stated that their exposure to toxic asbestos dust on board Shipowner Defendants' vessels caused various diseases including cancer. Plaintiffs have also stated that Shipbuilder Defendants and Machinery Manufacturer Defendants failed to consider that outfitting their equipment (i.e. boilers and generators) with asbestos insulation and asbestos products would result in the seamen's harmful exposure to asbestos. Plaintiffs have not demonstrated that Defendants' ships or their component parts were manufactured or designed in the Virgin Islands. Plaintiffs have also not provided any evidence that the manufacturers of asbestos and asbestos products designed, manufactured, or marketed asbestos products

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in the Virgin Islands. There is also no evidence that any repairs or inspections were made in this forum. Consequently, there is no prima facie evidence that Shipbuilder, Machinery Manufacturer, and Asbestos Products Manufacturer Defendants' alleged acts (or omissions) of negligence occurred in this territory.

The Plaintiffs also state that the Shipowner Defendants maintained their vessels in an unsafe and unseaworthy condition. Plaintiffs also contend that this Court can exercise jurisdiction since Defendant Shipowner Defendants' acts of negligence occurred in this territory. The term "tortious act" includes the concept of injury. Honeywell, Inc. v. Metz Appairtewerke, 509 F.2d 1137 (7th Cir. 1975). Courts have held that the situs of the tort is the place of injury. Honeywell, supra; Gray v. American Radiator and Standard Sanitary Corp., 176 N.E.2d 761 (1961). McBreen v. Beech Aircraft Corp., 543 F.2d 26 (1976). Both Honeywell and McBreen involved tort claims under the Illinois long-arm statute, Ill. Rev. Stat. Ch. 110. Section 17 (1)(b) of the Illinois long-arm statute is similar to Section 4903(a)(3) of the Virgin Islands long-arm statute in that it allows the Court to exercise jurisdiction over non-resident defendants who have committed a tortious act within the state. In Honeywell, the court found that the tort of patent infringement was committed at the patent holder's principal

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place of business in Illinois. The court in McBreen noted that the fact that the plaintiff's reputation was damaged in Illinois settled any 'dispute' as to where the libel occurred. As noted in the court's discussion on injury, infra, the Plaintiffs have not submitted any *prima facie* evidence that their injuries occurred in this territory. The Court thus finds that the Plaintiffs have not established that the Shipowner Defendants' alleged acts of negligence in maintaining their vessels occurred in the Virgin Islands.

Similarly, there is no *prima facie* evidence that the Defendants' alleged failure to warn the Plaintiffs of the presence of asbestos on the ships occurred here. As noted in Carty, the traditional locus of the failure to warn the plaintiffs of the presence of the asbestos on the ships is the manufacturer's or corporation's headquarters and not the countless jurisdictions wherein the products travel. Accordingly, 4903(a)(3) does not apply here.

5 V.I.C. § 4903(a)(4) requires two elements for personal jurisdiction. First, there must be an act or omission done outside the Virgin Islands causing injury in the Virgin Islands. Second, the person causing the injury must regularly do business in the Virgin Islands, engage in a persistent course of conduct in the Virgin Islands or derive substantial revenue from goods used or services rendered here. The Commissioners' comment to

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the Uniform Act notes that the 'regular solicitation of business or persistent course of conduct' required by 1.03(a)(4) [the counterpart of section 4903(a)(4) of the Virgin Islands statute] need have no relationship to the act or failure to act that caused the injury. 13 U.L.A. 1.03 at 468(1980). A defendant's activities, including a course of conduct, soliciting business, and deriving revenue from goods being used in the territory, may be sufficient cumulatively to establish a jurisdictional presence, even though no single element would suffice. Hendrickson v. Reg O Co., 657 F.2d 9 (3d Cir. 1981) (jurisdiction asserted under 4903(a)(3) where foreign manufacturer derived substantial revenue and regularly sent catalogues, price sheets and equipment instructions concerning its products to the Virgin Islands).

In Noel v. Horn, 19 V.I. 186 (D.V.I. 1982), the plaintiff brought a medical malpractice action against a non-resident doctor from Puerto Rico. Mr. Noel contended that the doctor's negligence during the surgery resulted in a post operative infection. The plaintiff argued that the original injury in Puerto Rico continued when he returned to St. Croix and thus satisfied 4903(a)(4)'s injury in the Virgin Islands requirement. The court, however, interpreted §4903(a)(4)'s injury in the Virgin Islands requirement to be "the place where the original injury was inflicted or imparted, rather than the

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"place of the resultant damage." The court rejected the plaintiff's "attempts to base jurisdiction on remote or consequential injuries which occur in a particular forum, simply because [the] plaintiff lives there".

In these cases, Plaintiffs fail to satisfy 4903(a)(4)'s "tortious injury in this territory" requirement. Plaintiffs' legal injuries must have occurred in the Virgin Islands for purposes of personal jurisdiction. The complaints allege that the Defendants exposed the Plaintiffs to asbestos during their careers as merchant marines. However, Plaintiffs have not demonstrated that the Plaintiffs' original injuries were inflicted or imparted in the Virgin Islands. The Court can not exercise jurisdiction based on remote or consequential injuries that occurred in this forum.

Furthermore, even if the Plaintiffs' original injuries were inflicted in this forum, the Court can not exercise jurisdiction over the Shipbuilder, Machinery Manufacturer and Asbestos Products Manufacturer Defendants. The Plaintiffs have not provided any evidence that the Shipbuilder, Machinery Manufacturer and Asbestos Products Manufacturer Defendants ever regularly conducted or solicited business, engaged in persistent conduct, or generated substantial revenue from the Virgin Islands. Thus, the Court can not exercise personal jurisdiction over these Defendants under 4903(a)(4).

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In contrast to the other Defendants, the Shipowner Defendants' frequent portcalls to the territory may satisfy 4903(a)(4)'s "persistent course of conduct" condition. Again, assuming that the Plaintiffs injuries were imparted in the Virgin Islands, this Court could not assert jurisdiction over the Shipowner Defendants. Pursuant to 4903(b), Plaintiffs' claims for relief must arise from the Shipowner Defendants' forum activities. Consequently, the Court must find a substantial connection between the Plaintiffs' claims and the Defendants' forum activities in order to exercise jurisdiction over non-resident Defendants. See Faherty v. Fender, 572 F.Supp. 142 (S.D.N.Y. 1983), Xedit Corp. v. Harvel Indus. Corp., 456 F.Supp. 725 (S.D.N.Y. 1978).

Both Faherty and Xedit Corp. involved New York's long-arm statute. Like 5 V.I.C. §4903(b), New York's long-arm statute, CPLR Section 302(a) requires that the plaintiff's cause of action arise out of the defendant's activities in the forum state. In Xedit Corp., the plaintiff sued for misappropriation of trade secrets. Plaintiff had discussed his product with the defendant at a trade show in New York. The court found that the defendant's alleged tortious activities were significantly different in time, geography, and quality from defendant's New York activity. While the court found that the defendant's forum activities were a link in the chain of events leading to

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plaintiffs claim, it noted that "something more [was] needed " to assert jurisdiction over the defendant.

In Faherty v. Fender, supra, the plaintiff and defendant had entered into substantial negotiations in New York over oil and gas exploration agreements involving wells in Texas and Louisiana. Fender obtained a Texas default judgment in a breach of contract action against Faherty. Arguing that the Texas judgment involved false representations by Fender, Faherty sought a declaratory judgment in New York that the Texas judgment was void. Plaintiff also sought damages for abuse of process and intentional infliction of emotional distress. The court found that defendant's activities in Texas were separated significantly in time, geography, and quality from his activities in New York. Noting that the defendant's New York activities were only a link in the chain of events, the court found that plaintiff's cause of action did not bear a substantial relationship to defendant's forum activity.

Herein Plaintiffs have not presented any prima facie evidence that their negligence and unseaworthiness claims arose from Shipowner Defendants' portcalls to the territory. The Shipowner Defendants' vessels have travelled thousands of miles across the globe over several years. There is no evidence herein indicating that Plaintiffs' claims arose from the Shipowner Defendants' 'forays' into the territory as opposed to

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during their travels to other jurisdictions. Thus, it is far from clear that the Shipowner Defendants' forum activities were even a link in the chain of events leading to Plaintiffs' claims of negligence and unseaworthiness. In the absence of evidence indicating a substantial relationship between Plaintiffs' claims and Shipowner Defendants' forum activities, this Court cannot exercise jurisdiction over the Shipowner Defendants under 4903(a)(4).

The Plaintiffs argue that 5 V.I.C. § 4902 permits the Court to exercise general jurisdiction over the Defendants. 5 V.I.C. § 4902 states:

A court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business, in this territory as to any claim for relief.

As the Defendants do not maintain their principal places of business in the territory, 5 V.I.C. § 4902 does not apply.

Plaintiffs also contend that the RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§47 and 52 (1971) allow the Court to exercise personal jurisdiction over Defendants. Pursuant to 1 V.I.C. §4, the RESTATEMENTS OF LAW apply in the absence of local laws to the contrary. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 47 states:

"(2) A state has power to exercise judicial jurisdiction over a foreign corporation which does business in the state with

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respect to causes of action that do not arise from the business done in the state if this business is so continuous and substantial as to make it reasonable" for the state to exercise such jurisdiction.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 47.

Comment A of Section 47 states that 'doing business' is doing a series of similar acts for the purpose of thereby realizing pecuniary profit or otherwise accomplishing an object.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 47. See Ketcham v. Charles R. Lester Intern. Inc., 400 A.2d 487 (N.J. Super. 1979) (court found that defendant's local newspaper advertising and telephone and letter communication on behalf of client in forum state constituted doing business in the forum state); Labbe v. Nissen Corp., 404 A.2d 564 (Me. 1979) (court found that the defendants acts of advertising in local newspaper, sending sales literature to schools in the forum state and distributing sales literature to local dealers constituted doing business in the forum state). Plaintiffs have not provided any evidence indicating that Defendants performed services or regularly and actively solicited business in the territory. As the Plaintiffs have not submitted any evidence indicating that the Defendants transacted business in the territory, the Court finds that § 47 of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS does not apply.

Plaintiffs refer to Dickson v. Hertz, 559 F.Supp.1169 (D.V.I. 1983) to support their theory that the Court can

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exercise general jurisdiction over this case under Section 52 of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS Section 52 states:

"A state has power to exercise judicial jurisdiction over a foreign corporation... in ... situations where the foreign corporation has such a relationship to the state that it is reasonable for the state to exercise such jurisdiction".

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 47 (1971).

While Dickson did assert jurisdiction over a foreign corporation under section 52, it can be distinguished from the facts here. Dickson involved the court's assertion of personal jurisdiction of a foreign corporation based on its dominance and control of local licensees. With the lone exceptions of Amerada Hess and Texaco, the Defendants herein do not have any business relationships with any local corporations in the territory. Consequently, Dickson fails to support the Plaintiffs' argument for personal jurisdiction. Section 47 of the RESTATEMENT (SECOND) OF CONFLICT OF LAW has generally been applied in the context of a parent corporation - subsidiary corporation business relationship, See i.e. In re Beck Industries, Inc., 725 F.2d 880 (2d Cir. 1984). Bulova Watch Co. Inc. v. K. Hattori and Co. Ltd., 508 F. Supp. 1322 (E.D. N.Y. 1981).

While the Court need not be limited by the parent-subsidiary context relationship in applying § 52, there must still be a reasonable relationship between Defendants and this

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forum for the Court to exercise jurisdiction under § 52. Plaintiffs have not demonstrated that Defendants had such a relationship to the territory that it would be reasonable for this Court to assume jurisdiction. Thus, the Court finds that Section 52 of the **RESTATEMENT (SECOND) OF CONFLICT OF LAWS** of does not apply herein.

As the Virgin Islands Long-Arm Statute does not authorize personal jurisdiction over Defendants, the Court need not determine if the exercise of jurisdiction comports with the constitutional requirements of due process. Nevertheless, even if the Court determined that the Virgin Islands Long-Arm Statute permitted it to exercise personal jurisdiction over the Defendants, the Court would still not be able to assert jurisdiction over the Defendants under a constitutional jurisdictional analysis.

Initially, the Plaintiffs sought jurisdiction under the specific jurisdiction doctrine. The complaint contended that the tortious activity occurred in whole or in part within the waters of the Virgin Islands. At the December 21, 1992 hearing, however, Plaintiffs' counsel stated that he was asserting general jurisdiction. Plaintiffs' Answers and Objections to Admissions and Interrogatories on behalf of all 39 plaintiffs stated that they were relying upon general jurisdiction. Plaintiffs have not provided the Court with any evidence of

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forum related contacts that would trigger a specific jurisdiction analysis. Accordingly, the Court will only consider the facts under a general jurisdiction analysis.

To establish general jurisdiction, the Plaintiffs must show significantly more than mere minimum contacts. Dollar Sav. Bank v. First Sec. Bank of Utah, N.A., 746 F.2d 208 (3d Cir. 1984). Since the forum state has no direct interest in the cause of action, Bearry v. Beech Aircraft Corp., 818 F.2d 370 (5th Cir. 1987), the non-resident's contacts to the forum must be continuous and substantial Gehling v. St. George's School of Medicine, Ltd., 773 F.2d 539 (3d Cir. 1985); Compagnie des Bauxites de Guineau v. Ins. Co. of N.Am., 651 F.2d 877 (3d Cir. 1981) cert. denied 457 U.S. 1105 (1982). The Supreme Court has noted two important general jurisdiction contacts: substantial business activities and purposeful conduct directed towards the forum state. In Perkins v. Benquet Consol. Mining Co., 342 U.S. 437 (1952), a mining company conducted a limited portion of its business in the forum state. Nevertheless, the company president drew salary checks, held several director's meetings and kept company files in the forum state. The Supreme Court found that there was 'continuous and systematic contacts' since the mining company president maintained an office and carried on its business affairs in the forum state.

The Supreme Court, however, refused to find general

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jurisdiction in Helicopteros Nacionales, supra. The plaintiff in Helicopteros brought a wrongful death action in a Texas state court against a Colombian corporation and others. The Colombian corporation's contacts with the forum state included the acceptance of checks drawn on a Texas bank and purchases of helicopters and equipment from a Texas manufacturer and related training trips. The Supreme Court noted that the bank on which a check is drawn is of little consequence to the payee. It found that such unilateral activity of another party or third person should not be considered when determining continuous and systematic contacts. The Court also noted that mere purchases alone, even if occurring at regular intervals, are not enough to warrant in personam jurisdiction in a non-forum related matter.

Three recent cases have addressed the issue of general jurisdiction in the context of a maritime law. A deckhand in Dalton v. R. and W. Marine, Inc., 897 F.2d 1359 (5th Cir. 1990) brought a Jones Act and general maritime law action against his employer and its corporate parent. The plaintiff argued that the Delaware corporate parent had sufficient contacts with Louisiana to warrant personal jurisdiction. He noted that the corporation bareboat chartered its boats to its Louisiana subsidiaries, engaged in advertising that reached Louisiana, and purchased vessels at marshal's sales within the forum state. The court found that contacts were not continuous and systematic

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for the purposes of general jurisdiction. The court noted that the bareboat charters evidenced Midland's ownership of the vessels. Still, the court found that the business activity involving the charter was conducted in Cincinnati and not the forum state. The court found no basis to conclude that the corporate parent "purposely availed itself of contacts of a quality or nature" that would support jurisdiction in the forum state.

In Asarco, Inc. v. Glenara, Ltd., 912 F.2d 784 (5th Cir. 1990), the owner of cargo which was lost at sea when a vessel sank brought suit to recover damages against Glenara and Anglo-Eastern alleging sufficient contacts with the forum state to support jurisdiction. Anglo-Eastern did not maintain an office, own property, or employ personnel in the state. Ships managed by Anglo-Eastern made portcalls to Louisiana for the period between 1985-1989. Of these 20 calls, two occurred in 1985 nine in 1986, two in 1987, four in 1988 and three in 1989. The court found that these contacts were better characterized as sporadic rather than continuous and systematic. The court stated that these contacts were insufficient to cause Anglo-Eastern to reasonably anticipate the possibility of being haled into court in Louisiana. The court also found that Anglo-Eastern, as a result of the time charter, lacked control over where the vessels would make port. Consequently, Anglo-Eastern could not

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act have purposely availed itself of the benefits and protections of doing business in Louisiana. The court held that Anglo-Eastern did not have sufficient "continuous and systematic" contacts with the forum to support general jurisdiction.

In Nicolaisen v. Toei Shipping Co., Ltd, 722 F.Supp. 1162 (D.N.J. 1989), an admeasurer brought an action for personal injury against a Japanese shipowner in New Jersey. The injury occurred while the plaintiff was attempting to board a Japanese vessel in the Panama Canal. Toei owned the vessel. At the time of the plaintiff's injury, the vessel was operating under a 7 1/2 year time charter with Reefer Express, a Bermudian Corporation with no office in New Jersey. As the time charterer, Reefer Express directed where the vessel would voyage. From 1980 to 1984, the vessel made 17 port calls to New Jersey. The court found that the vessel's portcalls "while spanning almost four years, were not consistent". After nine portcalls in 1982, the vessel only made one portcall in each of 1983 and 1984, and none after January 21, 1984. The court also noted that Toei's lack of control over where the vessel would make port "militates against finding that Toei was reasonably put on notice that it might be called upon to defend actions in New Jersey, especially actions that did not arise in the state".

This Court has determined the jurisdictional issue by

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reviewing the affidavits, interrogatories, depositions and arguments. Washington v. Norton Manufacturing Co., 588 F.2d 441 (5th Cir. 1979), cert. denied, 442 U.S. 942 (1979). Plaintiffs have not provided any prima facie evidence that the Shipbuilder, Machinery Manufacturer and Asbestos Products Manufacturer Defendants had continuous and systematic contacts with the territory. Consequently, this Court cannot assert personal jurisdiction over these Defendants under a due process analysis.

The focus of the Court's general jurisdictional analysis, then, will be on the Shipowner Defendants. The sheer bulk of the Plaintiffs' evidence is in the form of affidavits by mariners stating that they visited the ports or transited the waters of the Virgin Islands. The Plaintiffs have compiled this data into tables that indicate Plaintiffs, Shipowner Defendants, the ships and the dates that the ships made portcalls or transited the waters of the Virgin Islands. The Plaintiffs have also submitted depositions of the Shipowner Defendants' claim managers, personnel managers, crewing agents and other representatives. The Plaintiffs' attorneys asked these various deponents if they could reject or contradict the compilations. The deponents were only able to refute a small percentage of the data. Nevertheless, the Plaintiffs' compilations of data are inadequate for purposes of general jurisdiction. The exercise of jurisdiction is more than a

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numbers game. In order for the Court to exercise personal jurisdiction over the Shipowner Defendants, the Plaintiffs must prove that the Shipowner Defendants' contacts with this forum were continuous and systematic. Plaintiffs have not amply demonstrated that the Shipowner Defendants engaged in commerce and transportation to the Virgin Islands at regular intervals. At best, the information provided only indicates clusters of sporadic contacts. Such sporadic contacts would be insufficient to cause the Shipowner Defendants to anticipate the possibility of being "haled into court" in the Virgin Islands.

The Plaintiffs cite Huffman v. Island Oil and Transport Co., 424 N.E. 2d 1209 (Ill. App. 1981), cert. denied, 477 N.E. 1341 (1981) and Williams v. Lawson and Lawson Towing Co., 510 N.E. 2d 1308 (Ill. App. 5th Dist. 1987), cert. denied, 117 Ill. 2d 555 (1987), as 'precedents' mirroring the facts here. Both Huffman and Williams, however, can be factually distinguished from the facts in this case. In Huffman, the plaintiff filed an affidavit that listed the dates of movements, points of origin, and points of destination of vessels operated by the defendant. This data was gleaned from the records of the Corps of Engineers with respect to the waterway traffic. Another affidavit based on discussions with boat store employees set forth that defendant's crew members frequently purchased supplies, merchandise and services from the store. The court found that

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the defendant submitted to jurisdiction through its business activities in Illinois. In this case, the Plaintiffs did not submit any evidence of the Shipowner Defendants' routes and trades. Similarly, the Plaintiffs have not presented any affidavits by local store owners attesting to frequent purchases by crewmembers or as to other services or business activities.

In Williams, the defendant purchased food, fuel and supplies from businesses in Illinois. The defendant had repairs made in Illinois marine shipyards. Crewmen occasionally boarded the defendant's boats within Illinois. The court found that the defendant regularly and continuously carried on business in Illinois and exercised jurisdiction. Again, Plaintiffs have not carried their burden of establishing that the Shipowner Defendants purchased food, fuel, or any other supplies in the Virgin Islands.

Finally, several of the Shipowner Defendants, such as AMERICAN FOREIGN STEAMSHIP COMPANY, AMERICAN EAGLE TANKER CORPORATION, CHARLES KURZ & COMPANY, INC., INTEROCEAN MANAGEMENT CORPORATION and KEYSTONE TANKSHIP CORPORATION, have provided evidence indicating that their ships were time chartered. Under the terms of a time charter agreement, the charterer, and not the owner, directs where the vessels will voyage and at what ports the vessel will call. Nicolaisen, supra; Moore v. Phillips Petroleum Co., 912 F.2d 789 (5th Cir. 1990). The shipowner

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only furnishes the crew and officer required to operate the vessel. Nicolaisen, supra. The Shipowner Defendants' resulting lack of control over where their vessels make port militates against finding that the Shipowner Defendants were reasonably put on notice that they might be called to defend their actions in the Virgin Islands. See, Nicolaisen, supra, at 1165. Moreover, this same lack of control counsels against finding that the Shipowner Defendants purposely availed themselves of contacts of a quality or nature that will support jurisdiction in the Virgin Islands. See, Hansen, supra. Under these facts, the exercise of jurisdiction over the Shipowner Defendants by this Court would clearly offend constitutional standards of fair play and justice.

This Court concludes that Plaintiffs have failed to establish that the Territorial Court of the Virgin Islands may exercise personal jurisdiction over the Defendants named herein pursuant to the Virgin Islands Long-Arm Statute and the Due Process Clause of the Constitution Fourth Amendment to the

Accordingly, the Motion to Dismiss filed by the Defendants named herein will be Granted.


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