

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Hsu v. Axis Specialty Europe SE

Hsu · No. 25-cv-04826-SK · Decided August 11, 2025

SUMMARY

The United States District Court for the Northern District of California granted Axis Specialty Europe SE’s motion to dismiss an insurance coverage action. The court held that the defendant lacked sufficient contacts with California to support specific personal jurisdiction and denied jurisdictional discovery. The court also concluded that the Policy’s exclusive forum-selection clause required litigation in the courts of England and Wales, warranting dismissal on forum non conveniens grounds without prejudice.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Sallie Kim
JURISDICTION	United States District Court for the Northern District of California
DECIDED	August 11, 2025
DOCKET	25-cv-04826-SK
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), or alternatively to enforce a forum-selection clause through forum non conveniens. The court granted the motion and dismissed without prejudice.
STANDARD OF REVIEW	On a Rule 12(b)(2) motion decided without an evidentiary hearing, the plaintiff must make a prima facie showing of jurisdictional facts; uncontroverted allegations are accepted as true and factual conflicts are resolved in the plaintiff’s favor, but bare allegations contradicted by affidavit are not accepted. The decision whether to allow jurisdictional discovery is reviewed for abuse of discretion. A forum-selection clause is enforced unless the clause is invalid, the claims fall outside its scope, or extraordinary circumstances make enforcement unjust.
PRECEDENTIAL VALUE	Unknown; federal district court order with no reported citation.

PARTIES

Fred Hsu v. Axis Specialty Europe SE

TOPICS

personal jurisdiction

forum non conveniens

motions to dismiss

insurance coverage

breach of contract

PRACTICE AREAS

civil procedure

insurance

contracts

commercial litigation

QUESTIONS PRESENTED

1. Whether the court could exercise specific personal jurisdiction over Axis based on its issuance of an insurance policy to California corporations.
2. Whether Hsu was entitled to jurisdictional discovery.
3. Whether the policy's forum-selection clause was valid and applicable to Hsu's claims.
4. Whether Hsu demonstrated extraordinary circumstances that would make enforcement of the forum-selection clause unjust.
5. Whether the action should be dismissed under forum non conveniens in favor of the courts of England and Wales.

HOLDINGS

1. The court lacked specific personal jurisdiction over Axis because Hsu did not show that Axis purposefully availed itself of the privilege of conducting activities in California. The policy issued to California corporations, without additional California-directed conduct by Axis, was insufficient.
2. Hsu was not entitled to jurisdictional discovery.
3. The policy's forum-selection clause was valid and applied to Hsu's contract-related claims, designating the courts of England and Wales as the exclusive forum.
4. Hsu did not establish fraud or coercion, deprivation of his day in court, or a sufficiently strong public policy against enforcement of the forum-selection clause.
5. The action was dismissed without prejudice for lack of personal jurisdiction and, alternatively, under forum non conveniens based on the exclusive forum-selection clause.

KEY QUOTATIONS

“As Plaintiff has not satisfied the first prong of the personal jurisdiction test, personal jurisdiction does not lie in California.” (at 8)

“For the reasons set forth above, the Court GRANTS Defendant’s motion to dismiss for lack of personal jurisdiction and forum non conveniens without prejudice to Plaintiff refiling his complaint in the proper jurisdiction.” (at 14)

FACTUAL BACKGROUND

Fred Hsu served as a director of Mobile Gaming Technologies, Inc. and its subsidiary, CashBet Alderney Ltd., both California corporations. Axis, an Irish corporation with offices in Ireland, the United Kingdom, and Belgium, issued a directors-and-officers liability policy to those corporations for the period from January 8, 2018, to January 8, 2019. After Hsu was named as a defendant in four lawsuits, MGT sought coverage from Axis, which denied coverage. The policy was negotiated through an insurance broker with Axis's London underwriters and contained an exclusive forum-selection clause designating the courts of England and Wales.

PROCEDURAL HISTORY

Hsu filed claims for breach of contract and breach of the implied covenant of good faith and fair dealing in California state court. Axis removed the action based on diversity jurisdiction and moved to dismiss. After briefing and oral argument, the district court dismissed without prejudice for lack of personal jurisdiction and, alternatively, because the policy's exclusive forum-selection clause required litigation in the courts of England and Wales.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

No remand was ordered. The dismissal was without prejudice to Plaintiff refiling his complaint in the proper jurisdiction.

CASES CITED

- *Boschetto v. Hansing*, 539 F.3d 1011, 1015-16 (9th Cir. 2008)
- *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-02 (9th Cir. 2004)
- *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011)
- *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998)
- *International Shoe Co. v. State of Washington*, *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)
- *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)
- *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)
- *Burger King Corp. v. Rudzewicz*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 477-78 (1985)
- *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (per curiam)
- *Abrego Abrego v. The Dow Chemical Co.*, 443 F.3d 676, 691 (9th Cir. 2006) (per curiam)
- *Laub v. U.S. Department of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003)
- *LNS Enterprises LLC v. Continental Motors, Inc.*, 22 F.4th 852, 864-65 (9th Cir. 2022)
- *Silvers v. Board of Equalization*, 116 Cal. Rptr. 3d 355, 356 (Ct. App. 2010)
- *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015)

- Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance Co., 907 F.2d 911, 912-14 (9th Cir. 1990)
- King v. American Family Mutual Insurance Co., 632 F.3d 570, 572-80 & n.10 (9th Cir. 2011)
- Carter v. Mississippi Farm Bureau Casualty Insurance Co., 109 P.3d 735, 741-42 (Mont. 2005)
- Jaeger v. American Family Mutual Insurance Co., S.I., 735 F. Supp. 3d 1125, 1132-33 (D. Alaska 2024)
- First National Bank of Sioux Falls v. Estate of Carlson, 448 F. Supp. 3d 1091, 1103-04 (D. Mont. 2020)
- Webcor Construction, LP v. Zurich American Insurance Co., No. 17-CV-02220-YGR, 2017 WL 5068674, at *4-6 (N.D. Cal. Nov. 3, 2017)
- Dokoozian Construction LLC v. Executive Risk Specialty Insurance Co., No. C15-703 MJP, 2015 WL 12085859, at *3 (W.D. Wash. July 28, 2015)
- Hunt v. Auto-Owners Insurance Co., No. 2:15-CV-JCM NJK, 2015 WL 3626579, at *5 (D. Nev. June 10, 2015)
- Scott, Blane & Darren Recovery LLC v. Auto-Owners Insurance Co., No. 2:14-CV-03675-ODW, 2014 WL 4258280, at *4-6 (C.D. Cal. Aug. 27, 2014)
- Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas, 571 U.S. 49, 60-64 (2013)
- Cooper v. Tokyo Electric Power Co., Inc., 860 F.3d 1193, 1210 (9th Cir. 2017)
- Yei A. Sun v. Advanced China Healthcare, Inc., 901 F.3d 1081, 1086-92 (9th Cir. 2018)
- M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15, 18 (1972)
- White Knight Yacht LLC v. Certain Lloyds at Lloyd's London, 407 F. Supp. 3d 931, 943-48 (S.D. Cal. 2019)
- Nguyen v. Barnes & Noble, Inc., 763 F.3d 1171, 1180 (9th Cir. 2014)
- Blunt v. Fidelity & Casualty Co., 78 P. 729, 730 (Cal. 1904)
- Crown Capital Securities, L.P. v. Liberty Surplus Insurance Corp., No. SACV1401065JLSDFMX, 2015 WL 12748815, at *5, *7 (C.D. Cal. Mar. 30, 2015)
- Weber v. PACT XPP Technologies, AG, 811 F.3d 758, 774 (5th Cir. 2016)
- Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 n.6 (1981)
- Boghos v. Certain Underwriters at Lloyd's of London, 115 P.3d 68, 75 (Cal. 2005)
- Spector v. Global Aerospace Underwriting Managers, Ltd., No. B271085, 2017 WL 2806881, at *6-7 (Cal. Ct. App. June 29, 2017)
- Connex R.R. LLC v. AXA Corporate Solutions Assurance, 209 F. Supp. 3d 1147, 1151 (C.D. Cal. 2016)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
 FRED HSU, Case No. 25-cv-04826-SK 8 Plaintiff, ORDER GRANTING MOTION TO 9 v.
 DISMISS 10 AXIS SPECIALTY EUROPE SE, Regarding Docket No. 8 11 Defendant. 12 This
 matter comes before the Court upon consideration of the motion to dismiss filed by 13 Axis
 Specialty Europe SE (“Defendant”) for lack of personal jurisdiction or, in the alternative, 14 forum
 non conveniens.

This Court has jurisdiction pursuant to 28 U.S.C. § 1332, and all parties have consented to the jurisdiction of a magistrate judge, (Dkt. Nos. 10, 11). Having carefully considered the parties' papers, relevant legal authority, the record in the case, and having had the benefit of oral argument, the Court hereby GRANTS Defendant's motion for the reasons set forth below.

BACKGROUND Plaintiff Fred Hsu ("Plaintiff") brings this action against Defendant based on its denial of liability insurance coverage. (Dkt. No. 1-1.) Plaintiff served as Director of two corporations: Mobile Gaming Technologies, Inc. ("MGT") and its subsidiary, CashBet Alderney Ltd. ("CashBet"). (Dkt. No. 16-1, ¶¶ 3-4.) Defendant issued a Directors and Officers Liability Insurance Policy (the "Policy") to MGT and CashBet covering the January 8, 2018 to January 8, 2019 period.

(Dkt. No. 8-1, ¶ 10; Dkt. No. 8-2 (Ex. A); Dkt. No. 16-1, ¶ 5; Dkt. No. 16-1 (Ex. 26 C).) MGT sought coverage from Defendant relating to four lawsuits that named Plaintiff as a defendant. (Dkt. No. 8-1, ¶¶ 12-13; Dkt. No. 16-1, ¶¶ 10-11.) Defendant denied coverage. (Dkt. 1 On March 25, 2025, Plaintiff filed this action in the Superior Court of California for the County of Alameda, bringing claims for breach of contract and breach of the covenant of good faith and fair dealing.

(Dkt. No. 1-1.) On June 6, 2025, Defendant removed the action to federal court on the basis of diversity jurisdiction. (Dkt. No. 1.) Defendant filed the instant motion to dismiss on June 13, 2025, arguing that this Court lacks personal jurisdiction over it and that the Court should enforce a forum selection clause in the Policy identifying the Courts of England and Wales as the forum of choice.

(Dkt. No. 8.) Plaintiff opposed. (Dkt. No. 16.) Defendant filed a reply. (Dkt. No. 20.) The Court heard oral argument on August 11, 2025. ANALYSIS A. Personal Jurisdiction. 1. Applicable Legal Standard. 2 Federal Rule of Civil Procedure 12(b)(2) permits a defendant to move to dismiss an action 3 for lack of personal jurisdiction. Presented with such a motion, the plaintiff then bears the burden 4 of establishing that jurisdiction is proper.

Boschetto v. Hansing, 539 F.3d 1011, 1015 (9th Cir. 15 2008). If the district court decides the motion without holding an evidentiary hearing, as is the case here, the plaintiff need only make a prima facie showing of the jurisdictional facts. *Id.* The court takes uncontroverted allegations in the plaintiff's complaint as true and resolves any factual conflicts in the plaintiff's favor.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). However, the plaintiff may not merely rest on bare allegations, and the court may not assume the truth of allegations contradicted by affidavit. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citations omitted). 22 Where, as here, no federal statute authorizes personal jurisdiction, the district court must 23 apply the law of the state in which it sits.

Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1320-24 (9th Cir. 1998). California's long-arm statute, Cal. Civ. Proc. Code § 410.10, is coextensive with the due process clause of the Constitution. Panavision, 141 F.3d at 1320.

Accordingly, the jurisdictional analyses under state and federal law are the same. Schwarzenegger, 374 F.3d at 800-01. For a court to exercise personal jurisdiction over a nonresident defendant without the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)).

Personal jurisdiction may be either general or specific. Boschetto, 539 F.3d at 1016. Where, as here, the plaintiff asserts specific jurisdiction, courts apply a three-part test: (1) The nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) The claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) The exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must be reasonable.

Schwarzenegger, 374 F.3d at 802. The plaintiff bears the burden of satisfying the first two prongs of this test. Sher v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990). If the plaintiff fails to satisfy either of the first two prongs, personal jurisdiction does not lie in the forum state. Schwarzenegger, 374 F.3d at 802. If both prongs are satisfied, the burden shifts to the defendant to demonstrate that the exercise of jurisdiction would be unreasonable.

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985). In analyzing the first prong of the specific jurisdiction test, courts "typically treat the concept of 'purposeful availment' somewhat differently in tort and contract cases." Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006) (per curiam). "In contract cases" like the one at bar, courts "typically inquire whether a defendant 'purposefully avails itself of the privilege of conducting activities' or 'consummate[s] a transaction' in the forum, focusing on activities such as delivering goods or executing a contract." Id. (quoting Schwarzenegger, 374 F.3d at 802).

The decision regarding whether to allow jurisdictional discovery rests within the sound discretion of the trial court. Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 691 (9th Cir. 2006) (per curiam). Jurisdictional discovery "should ordinarily be granted where pertinent facts the facts is necessary." Laub v. U.S. Dep't of Interior, 342 F.3d 1080, 1093 (9th Cir.

2003) (quotation marks and citation omitted). "But a mere hunch that discovery might yield jurisdictionally relevant facts, or bare allegations in the face of specific denials, are insufficient

reasons for a court to grant jurisdictional discovery.” *LNS Enters. LLC v. Cont’l Motors, Inc.*, 22 5 F.4th 852, 864-65 (9th Cir. 2022) (cleaned up). 6 2. Application.

7 Defendant argues that Plaintiff has not met his burden of establishing the first prong—that 8 Defendant purposefully availed itself of the privilege of conducting business in California. (Dkt. 9 No. 8, pp. 10-12.)

The Court agrees. 10 Simply put, Defendant does not conduct business in California. Defendant is an Irish 11 corporation with offices in Ireland, the United Kingdom, and Belgium. (Dkt. No. 8-1, ¶¶ 3-4.) 12 Defendant has no employees, agents, or property in California. (Id. at ¶ 8.) Defendant is not 13 licensed to issue insurance in the state of California, nor is it registered with the California 14 Secretary of State.

(Id. at ¶¶ 5-6.) Plaintiff points out that Defendant is approved as a surplus 15 lines insurer in California, (Dkt. No. 16, p. 6), but that means that Defendant “ha[s] no presence in 16 California.” *Silvers v. Bd. of Equalization*, 116 Cal. Rptr. 3d 355, 356 (Ct. App. 2010). 17 Moreover, this action does not arise out of a surplus lines insurance contract.

In addition, Plaintiff 18 does not argue that Defendant reached out to California to negotiate the Policy or consummated 19 the transaction in California. Plaintiff’s declarations suggest that Plaintiff, not Defendant, reached 20 abroad to negotiate the Policy. Email exchanges document that Plaintiff’s broker’s “colleagues in 21 London” negotiated the policy with “London u/w [underwriters] at [Defendant].” (Dkt.

No. 16-1 22 (Ex. A)). 23 Defendant’s only connection to California appears to be the Policy issued to MGT and 24 CashBet, both California corporations. (Dkt. No. 16-1, ¶ 4.) MGT’s U.S.-based insurance broker 25 negotiated the Policy. (Id. at ¶ 7.) These are Plaintiff’s contacts, not, as is required, “actions by 26 the defendant himself that create a substantial connection with the forum State.” *Burger King*, 471 27 U.S. at 475 (quotation marks and citation omitted).

Defendant’s Policy with California 1 and issued the Policy from London. See *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) 2 (holding that an agreement with a California resident, which was formed and performed out-of- 3 state, was insufficient to establish minimum contacts with California); see also *Boschetto*, 539 4 F.3d at 1017 (“[A] contract alone does not automatically establish minimum contacts in the 5 plaintiff’s home forum.” (citing *Burger King*, 471 U.S. at 478)).

6 Plaintiff relies on *Farmers Insurance Exchange v. Portage La Prairie Mutual Insurance 7 Co.*, 907 F.2d 911 (9th Cir. 1990), to argue that “an insurer ‘purposefully avails’ itself of a forum 8 when it has ‘contracted to indemnify and defend claims arising there.’” (Dkt. No. 16, p. 7 9 (quoting id. at 914).

In *Farmers*, a Canadian insurer of a vehicle involved in an accident in 10 Montana refused to defend the driver—who did not own the vehicle—in Montana court. 907 F.2d 11 at 912. The driver had her own insurance, which provided a defense for her and then sued the 12 Canadian insurer for reimbursement in Montana federal district court. *Id.* The Ninth Circuit held 13 that the insurer purposefully availed itself of Montana because it contracted to defend the insured, 14 because its policy coverage included Montana, and because an insured event resulted in litigation 15 in Montana.

Id. at 913-14. The court reasoned that “automobile liability insurers contract to 16 indemnify and defend the insured for claims that will foreseeably result in litigation in foreign 17 states,” such that “litigation requiring the presence of the insurer is not only foreseeable, but it was 18 purposefully contracted for by the insurer.” *Id.* at 914 (emphasis added).

19 More recently, in *King v. American Family Mutual Insurance Co.*, 632 F.3d 570 (9th Cir. 20 2011), the Ninth Circuit narrowed the scope of its holding in *Farmers*. *Id.* at 580 n.10. In *King*, 21 the plaintiff sued two Colorado insurers for coverage over a motorcycle accident that occurred in 22 Montana. *Id.* at 572-73. Citing Montana caselaw, the court held that an insurance policy 23 containing a nationwide coverage clause was insufficient to establish personal jurisdiction in 24 Montana.

Id. at 580 (citing *Carter v. Miss. Farm Bureau Cas. Ins. Co.*, 109 P.3d 735, 742 (Mont. 25 2005)). The court distinguished *Farmers* on the basis that *Farmers* involved a dispute triggering 26 the insurers’ obligation to defend the insured, whereas *King* involved a breach of contract dispute, 27 explaining: a foreign insurer could be subjected to personal jurisdiction in Montana, *Farmers* was 1 an indemnity dispute.

As a result, *Farmers* was “a case in which a company’s insured is sued as a result of a car accident in a foreign state,” “arguably [giving rise to] an 2 obligation to appear and defend the driver,” while this is a case, like *Carter*, in which “the insured is suing its... insurer in a foreign state for breach of contract.” *Carter*, 3 109 P.3d at 741. 4 *Id.* at 580 n.10.

5 Following *King*, courts in this Circuit have consistently held that an insurance policy 6 containing a nationwide coverage clause, without more, is insufficient to establish personal 7 jurisdiction over an insurer. *Jaeger v. Am. Fam. Mut. Ins. Co., S.I.*, 735 F. Supp. 3d 1125, 1132- 8 33 (D. Alaska 2024); *First Nat’l Bank of Sioux Falls v. Est. of Carlson*, 448 F. Supp. 3d 1091, 9 1103-04 (D.

Mont. 2020); *Webcor Constr., LP v. Zurich Am. Ins. Co.*, No. 17-CV-02220-YGR, 10 2017 WL 5068674, at *4-6 (N.D. Cal. Nov. 3, 2017); *Dokoozian Constr. LLC v. Exec. Risk 11 Specialty Ins. Co.*, No. C15-703 MJP, 2015 WL 12085859, at *3 (W.D. Wash. July 28, 2015); 12 *Hunt v. Auto-*

Owners Ins. Co., No. 2:15-CV-JCM NJK, 2015 WL 3626579, at *5 (D. Nev. June 13 10, 2015); Scott, Blane & Darren Recovery LLC v. Auto-Owners Ins.

Co., No. 2:14-CV-03675- 14 ODW, 2014 WL 4258280, at *4-6 (C.D. Cal. Aug. 27, 2014). 15 This case is governed by King, not Farmers. Although Plaintiff was sued in California, 16 this suit is not an attempt to compel Defendant to defend him in those actions. Plaintiff has 17 already resolved the underlying California litigation. (Dkt. No. 16-1, ¶ 15.) Rather, Plaintiff now 18 seeks damages for Defendant's alleged breach of the insurance contract and breach of the implied 19 covenant of good faith and fair dealing.

(Dkt. No. 1, pp. 7–8.) As in King, this is a claim where 20 an “insured is suing its... insurer in a foreign state for breach of contract.” 632 F.3d at 580 n.10 21 (quoting Carter, 109 P.3d at 741). And “Farmers... does not apply in a situation where an 22 insured is suing its insurer in a foreign state for breach of contract.” First Nat'l, 448 F. Supp. 3d 23 at 1104.

24 As Plaintiff has not satisfied the first prong of the personal jurisdiction test, personal 25 jurisdiction does not lie in California. The Court therefore GRANTS Defendant's motion to 26 dismiss for lack of personal jurisdiction. 27 Plaintiff requests the Court permit jurisdictional discovery because “the information that is 1 16, p. 11.) At oral argument, Plaintiff indicated that he would seek to information about 2 Defendant's correspondence with the California Department of Insurance, number of California 3 policyholders, contacts with and marketing to California brokers, and corporate structure.

This 4 request is nothing more than “a mere hunch” unsupported by any details about what relevant 5 information Plaintiff expects to uncover. See LNS Enters., 22 F.4th at 864-65 (affirming denial of 6 jurisdictional discovery where the plaintiffs sought to “look[] into whether there are more 7 contacts,” because the lack of contacts based on existing facts did not “mean that those defendants 8 don't” conduct other business in the state”).

Plaintiff fails to make the necessary showing to 9 justify jurisdictional discovery, and his request is therefore DENIED. 10 B. Forum Non Conveniens. 11 Because this Court has no jurisdiction, the Court need not reach the question of whether 12 the forum selection clause applies.

However, the Court finds that, even if there were jurisdiction, 13 the forum selection clause here requires litigation of this issue in the courts of England and Wales, 14 as required by the Policy. 15 1. Applicable Legal Standard. 16 A forum selection clause is appropriately enforced through the doctrine of forum non 17 conveniens. Atlantic Marine Constr. Co. v. U.S. Dist.

Ct. for W. Dist. of Texas, 571 U.S. 49, 60 18 (2013). “The doctrine of forum non conveniens allows a court to dismiss a case properly before it 19 when litigation would be more convenient in a foreign forum.” Cooper v. Tokyo Elec. Power Co., 20 Inc., 860 F.3d 1193, 1210 (9th Cir. 2017). 21 A forum selection clause is enforceable if (1) the forum selection clause is contained in a 22

valid contract, (2) the plaintiff's claims fall within the scope of the forum selection clause, and (3) the plaintiff has not demonstrated "extraordinary circumstances unrelated to the convenience of the parties." *Atlantic Marine*, 571 U.S. at 62; *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081, 1086-88 (9th Cir.

2018). To demonstrate "extraordinary circumstances," the plaintiff must make a strong showing that: (1) the forum selection clause is invalid due to fraud or overreaching; (2) enforcement would be gravely difficult and inconvenient that [the litigant] will for all practical purposes be deprived of his day in court." *Yei A. Sun*, 901 F.3d at 1088 (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 18 (1972)). "The practical result is that a forum-selection clause 'should control except in unusual cases.'" *Id.* at 1088 (quoting *Atlantic Marine*, 571 U.S. at 64).

2. Application. The Policy contains the following language: "Except as otherwise provided herein, the parties will submit to the exclusive jurisdiction of the courts of the [sic] England & Wales." (Dkt. No. 8-2 (Ex. A); Dkt. No. 16-1 (Ex. C).) Plaintiff does not dispute that the Policy is a valid contract that encompasses his contract claims. (Dkt.

No. 16.) In brief, Plaintiff is seeking to benefit from the Policy, and thus, cannot seriously dispute that the Policy itself is valid. See *White Knight Yacht LLC v. Certain Lloyds of London*, 407 F. Supp. 3d 931, 947 (S.D. Cal. 2019) ("[A] non-signatory plaintiff who 'knowingly exploits the benefits of [an] agreement and receives benefits flowing directly from the 14 agreement' may be required to abide by the forum selection clause." (quoting *Nguyen v. Barnes & Noble, Inc.*, 763 F.3d 1171, 1180 (9th Cir.

2014))). The forum selection clause plainly designates the courts of England and Wales as the courts with exclusive jurisdiction over the Policy. (Dkt. No. 8-2 (Ex. A); Dkt. No. 16-1 (Ex. C).); see also *White Knight*, 407 F. Supp. 3d at 943-44 (explaining that contract claims "paradigmatically fall within a contractual forum selection clause.").

Accordingly, a valid forum selection clause applies. However, Plaintiff argues that all three "extraordinary circumstances" disfavor transfer in this case—fraud or overreaching, deprivation of Plaintiff's "day in court," and public policy. (Dkt. No. 16, pp. 12-18.)

The Court addresses each argument in turn. i. Fraud or Overreaching. "For a party to escape a forum selection clause on the grounds of fraud, it must show that 'the inclusion of that clause in the contract was the product of fraud or coercion.'" *Richards v. Lloyd's of London*, 135 F.3d 1289, 1297 (9th Cir. 1998) (en banc) (quoting *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519 n.14 (1974)).

1 because the insureds allegedly "did not have an opportunity to become aware of the clause or to 2 contest it before the policy incepted." (Dkt. No. 16, pp. 12-13; Dkt. No. 16-1, ¶ 8 ("None of the 3 communications I received prior to the issuance of the policy informed me that there would be a

4 forum selection clause in the policy that required all disputes with [Defendant] be litigated in the
5 courts of England and Wales.”).)

6 Plaintiff’s own evidence belies his contention that he did not have an opportunity to learn 7 of
the forum selection clause. On February 7, 2018, Plaintiff received an email from MGT’s 8
insurance broker stating: 9 [T]he policy was issued this morning and will go thru [sic] our internal
audit procedure to ensure coverage/terms are according to the quote.

In the interim, please 10 find attached a copy of the policy for your review. If you and/or your
attorney have any questions, we will be happy to review them with you and Mike. 11 (Dkt. No.
16-1 (Ex. B).) The attached Policy conspicuously includes the forum selection clause 12 on the
first page. (Dkt. No. 16-1 (Ex. C).)

The Policy also provides that it could be cancelled 13 through nonpayment of the premium. (Id. at
8.3.) Plaintiff has not provided any evidence that the 14 premium was paid prior to receipt of the
Policy, and the insureds apparently chose not to cancel 15 the Policy through nonpayment.

Moreover, during oral argument, Plaintiff did not deny that the 16 insureds could have cancelled
the Policy after reviewing it, conceding that they “probably” could 17 have done so.¹ Plaintiff
effectively agreed to the forum selection clause by taking no action 18 against it upon receiving
the policy. See *Blunt v. Fid. & Cas. Co.*, 78 P. 729, 730 (Cal. 1904) 19 (“[W]hen [the insured]
received the policy and accepted it without objection,” he could not “with 20 good reason claim
that there is anything contained in it to which he did not fully consent and 21 agree.”).

To the extent Plaintiff takes issue with Defendant’s issuance of the policy prior to his 22 review of
the Policy—a common practice in the insurance industry—that argument “go[es] only to 23 the
contract as a whole” and is not specific to the forum selection clause. *Crown Cap. Sec., L.P. v. 24*
Liberty Surplus Ins. Corp., No. SACV1401065JLSDFMX, 2015 WL 12748815, at *5 (C.D.

Cal. 25 26 1 Plaintiff further explained that cancellation of the policy would have been
“practically” 27 difficult because the insureds needed coverage. The fact the insureds desired the
benefit of the 1 Mar. 30, 2015) (“[A]n allegation of fraud ‘going only to the contract as a whole’ is
not sufficient 2 to avoid a forum selection clause.” (quoting *Richards*, 135 F.3d at 1297)).

3 Moreover, the circumstances surrounding this case further suggest that the insureds had the 4
ability to learn of the forum selection clause. In *White Knight*, another court in this Circuit found 5
that a plaintiff had the opportunity to learn of a forum selection clause where (1) the plaintiff was 6
an experienced corporate entity that should not have been surprised by the inclusion of a forum 7
selection clause in an insurance contract, (2) the plaintiff knew the insurance policy would be 8
obtained from London underwriters, and (3) the facts suggested that the Plaintiff had a copy of the
9 policy at the time payment was made.

407 F.Supp.3d at 946. 10 All three points in *White Knight* apply equally to the facts of this case. First, the insureds 11 are sophisticated business entities represented by an insurance broker, and thus, should have been 12 familiar with forum selection clauses in insurance agreements. *Id.* (“Forum selection clauses are 13 in rather widespread use throughout the insurance industry.” (quoting *Foster v. Chesapeake Ins.*

14 Co., 933 F.2d 1207, 1218 (3rd Cir. 1991))). Second, Plaintiff and MGT’s broker knew that 15 Defendant’s underwriters were located in London and that the agreement was being negotiated in 16 London. ((Dkt. No. 16-1 (Ex. A) (email communications stating, “We just received the formal 17 quote this morning from London from [Defendant],” “We have finally heard back from London 18 concerning the terms from [Defendant],” “We did hear back from London this morning 19 confirming that the underwriters at [Defendant] are okay offering terms,” “The London u/w at 20 [Defendant] is asking for prior year financials,” “Our colleagues in London are working with the 21 underwriters at [Defendant]”).).

Third, as previously discussed, Plaintiff has not shown that the 22 policy premium was paid before the insureds had an opportunity to review the Policy. 23 The Court concludes that the inclusion of the forum selection clause in the policy was not 24 the product of fraud or coercion. 25 ii. Deprivation of Day in Court. 26 The “deprivation of day in court” exception is “difficult to satisfy.” *Yei A. Sun*, 901 F.3d at 27 1091. “[U]nder *Atlantic Marine*, courts must enforce a forum-selection clause unless the 1 *Weber v. PACT XPP Techs., AG*, 811 F.3d 758, 774 (5th Cir.

2016)). “[T]he fact that certain 2 types of remedies are unavailable in the foreign forum does not change the calculus if there exists 3 a basically fair court system in that forum that would allow the plaintiff to seek some relief.” *Id.* 4 (quoting *Weber*, 811 F.3d at 774). 5 Plaintiff argues he will be deprived of his day in court because (1) litigating in England or 6 Wales would be inconvenient, and (2) the courts of England and Wales do not recognize the tort of 7 bad faith and rarely impose punitive damages.

(Dkt. No. 16, pp. 14-15.) 8 First, as to inconvenience, “[w]hen parties agree to a forum-selection clause, they waive 9 the right to challenge the preselected forum as inconvenient or less convenient for themselves or 10 their witnesses, or for their pursuit of the litigation.” *Atlantic Marine*, 571 U.S. at 64. While a 11 party may show that a forum selection clause should not be enforced if litigation literally could not 12 proceed in the chosen forum—such as when all witnesses are elsewhere or the party is physically 13 or financially unable to travel—Plaintiff has not made such a showing here.

White Knight, 407 14 F.Supp.3d at 947-48. Plaintiff argues that litigation would be burdensome and expensive, (Dkt. 15 No. 16, p. 14), but offers no specific evidence that he would be unable to pursue litigation in the 16 courts of England and Wales. See *White Knight*, 407 F.Supp.3d at 948 (rejecting “deprivation of 17 day in court” argument where the plaintiff offered no “specific and

concrete evidence that 18 pursuing [its] claims in the Courts of England and Wales would be gravely difficult or 19 inconvenient.”).

20 Second, as to the tort of bad faith and punitive damages, loss of a claim or remedy in a 21 foreign forum is insufficient to invalidate a forum selection clause. See *Yei A. Sun*, 901 F.3d at 22 1092. Plaintiff has not demonstrated that England and Wales lack “a basically fair court system” 23 that “would allow [him] to seek some relief” for his alleged breach of contract.

See *id.* 24 Accordingly, Plaintiff has not shown that the “deprivation of day in court” exception bars 25 enforcement of the forum selection clause in this case. 26 iii. Public Interest Factors. 27 Courts consider the following public interest factors: 1 (2) The local interest in having localized controversies decided at home; 2 (3) The interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; 3 (4) The avoidance of unnecessary problems in conflict of laws, or in the application 4 of foreign law; and 5 (5) The unfairness of burdening citizens in an unrelated forum with jury duty.

6 *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 n.6 (1981). 7 Plaintiff argues that all factors weigh in his favor but devotes analysis only to the local 8 interest factor. (Dkt. No. 16, pp. 15-18.) Specifically, Plaintiff argues that California has an 9 interest in providing a remedy for bad faith claims in the insurance context. (*Id.*) 10 “A contractual choice-of-forum clause should be held unenforceable if enforcement would 11 contravene a strong public policy of the forum in which suit is brought, whether declared by 12 statute or by judicial decision.” *M/S Bremen*, 407 U.S. at 15.

Plaintiff has not identified a 13 California statute or judicial decision announcing a public policy of providing a remedy for bad 14 faith insurance. On the contrary, the California Supreme Court has explicitly rejected the idea that 15 insurance bad faith claims are tethered to a public policy. *Boghos v. Certain Underwriters at 16 Lloyd’s of London*, 115 P.3d 68, 75 (Cal.

2005) (holding that an insured’s claim for breach of the 17 covenant of good faith and fair dealing did not qualify as “an unwaivable statutory right”); see 18 also *Crown Cap.*, 2015 WL 12748815, at *7 (rejecting argument that loss of insurance bad faith 19 claim would contravene California public policy (citing *id.*)); *Spector v. Glob. Aerospace 20 Underwriting Managers, Ltd.*, No. B271085, 2017 WL 2806881, at *6-7 (Cal.

Ct. App. June 29, 21 2017) (explaining that *Boghos* “rejected the proposition that insurance bad faith claims embody a 22 statutory public policy precluding their waiver.”). 23 Plaintiff relies on *Connex R.R. LLC v. AXA Corp. Sols. Assurance*, 209 F. Supp. 3d 1147 24 (C.D. Cal. 2016) for the proposition that “[a]n insured’s right to bring bad faith claims for tort and 25 punitive damages against an insurer is fundamental to California’s public policy....” (Dkt.

No. 26 16, p. 17 (quoting id. at 1151). However, Connex did not cite any California statute or judicial 27 decision announcing such a public policy, nor did it consider Boghos's contrary language. See 1 Boghos). Accordingly, Connex does not alter the Court's analysis. 2 In conclusion, no "extraordinary circumstances" disfavor transfer to the courts of England 3 and Wales in this case.

Thus, even if the Court had jurisdiction over Defendant, enforcement of 4 || the forum selection clause warrants dismissal of this action pursuant to forum non conveniens. 5 CONCLUSION 6 For the reasons set forth above, the Court GRANTS Defendant's motion to dismiss for 7 || lack of personal jurisdiction and forum non conveniens without prejudice to Plaintiff refiling his 8 || complaint in the proper jurisdiction.

9 IT IS SO ORDERED. 10 Dated: August 11, 2025 4 (° la,. 11 SALLIE KIM 12 United States Magistrate Judge 15 16 = 17 Z 18 19 20 21 22 23 24 25 26 27 28