UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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

GARTNER, INC.'S MOTION TO CERTIFY PERSONAL JURISDICTION QUESTIONS FOR INTERLOCUTORY REVIEW UNDER 28 U.S.C. § 1292(b)

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GARTNER, INC.'S MOTION TO CERTIFY PERSONAL JURISDICTION QUESTIONS FOR INTERLOCUTORY REVIEW UNDER 28 U.S.C. § 1292(b)

Defendant Gartner, Inc. ("Gartner") moves under 28 U.S.C. § 1292(b) to certify the following questions for interlocutory review by the Fifth Circuit:

1. Whether this Court can, consistent with the Due Process Clause, assert specific jurisdiction over a nonresident policyholder who did nothing in Texas to procure the disputed policy (which covers cancellation of events around the world), solely because the insured is a "long-term" policyholder who the insurer asserts might reasonably have foreseen that its policy would be issued by an insurance company in Houston, when the insurer brings suit only to obtain clarification of its own obligation to pay claims under the policy and makes no claim that the policyholder committed any breach or caused any harm in Texas?

2. Whether this Court can, consistent with the Due Process Clause, assert general jurisdiction over a Delaware corporation with a principal place of business in Connecticut simply because the company's Texas operations employ 14% of its domestic workforce and generate approximately 4% of its total revenue, and the company is registered to do business and pays franchise taxes in Texas?

SUMMARY OF ARGUMENT

This Court should certify for interlocutory review pursuant to 28 U.S.C. § 1292(b) the question of whether, consistent with the Due Process Clause, this Court can properly exercise either specific or general personal jurisdiction over Gartner in this case. It is insufficient, for constitutional purposes, for a Texas insurer merely to show that a nonresident insured has been a long-term policyholder who reasonably could have foreseen that a Texas insurer would provide

coverage, when the policyholder did nothing in Texas to procure its policy and the insurer seeks to force the policyholder to come to Texas to defend a suit brought by the carrier seeking a declaration ratifying its denial of coverage. No decision anywhere has been located imposing specific jurisdiction in such a case. It is also inadequate, for constitutional purposes, for a Texas insurer to show that a nonresident corporate insured, organized in Delaware and headquartered in Connecticut, has operations in Texas that account for a small share of its total workforce and overall revenues. These are not "exceptional" circumstances warranting the exercise of general jurisdiction under controlling U.S. Supreme Court precedents. The certification of the two questions proposed by Gartner would satisfy all of the statutory requirements under § 1292(b) and be in the best interests of justice.

If the Court grants Gartner's motion, Gartner requests that it stay further proceedings in this case pending review by the Fifth Circuit. The Fifth Circuit should be given an opportunity to review the important jurisdictional issues Gartner has raised before further resources are devoted to this case. If the Fifth Circuit concludes that this Court never had personal jurisdiction, any decisions it may reach on the merits will be nullified. The balance of harms favors a stay, and so does the public interest. The approach to personal jurisdiction taken in this case could have far-reaching consequences: individual and corporate policyholders in Texas, as well as in Connecticut and throughout the county, could now face a previously unforeseeable risk of being forced to litigate in distant states whenever their insurers seek to have a court declare that they have no obligation to pay a contested claim. A stay should be granted to allow the Fifth Circuit to issue guidance on the important issues of law presented by Gartner's motion to dismiss.

I. PROCEDURAL HISTORY

Plaintiff U.S. Specialty Insurance Company ("USSIC") filed its initial Complaint in this case on May 27, 2020 seeking a declaration clarifying its obligations to pay claims Gartner has asserted under an event cancellation policy issued to Gartner under USSIC's name. ECF 1. Gartner timely filed two motions: one to dismiss for lack of personal jurisdiction; and one to dismiss an improper anticipatory declaratory judgment action, or, in the alternative, to transfer the case to be consolidated with Gartner's pending affirmative suit in the Southern District of New York. ECF 11; ECF 12. Recognizing its initial Complaint was inadequate, USSIC filed an Amended Complaint on July 14 in an unsuccessful attempt to bolster its jurisdictional allegations. ECF 23. Gartner withdrew without prejudice its pending motions, and on July 24 Gartner moved to dismiss USSIC's Amended Complaint for lack of personal jurisdiction. ECF 27. USSIC filed its opposition to Gartner's motion on August 10. ECF 28. Gartner's motions and USSIC's responses were filed according to the agreed deadlines the parties submitted to the Court for approval. ECF 24, 24-1. According to the parties' proposal, Gartner's deadline to file its reply would have been August 17. *Id*.

Before Gartner filed its reply brief, this Court issued an Order on August 13 denying Gartner's motion to dismiss. ECF 31. The Court's Order does not disclose the basis for its determination that USSIC has established personal jurisdiction or otherwise explain its ruling.

Because the theories of jurisdiction promoted by USSIC are inconsistent with controlling U.S. Supreme Court precedent and threaten to up-end well-accepted jurisdictional understandings in insurance coverage litigation, Gartner moves under 28 U.S.C. § 1292(b) to certify for

interlocutory appellate review the important issues of general and specific jurisdiction that are raised by the Court's Order.[1]

II. JURISDICTIONAL FACTS

With respect to the assertion of **specific personal jurisdiction**, Gartner has shown – and USSIC has not disputed – that Gartner never did anything in *Texas* to procure any of the event cancellation policies that were issued to Gartner under USSIC's name. When Gartner moved to dismiss, it offered proof that Gartner's broker in New York, Aon/Albert G. Rubin Insurance Services ("Aon"), negotiated the terms of Gartner's event cancellation policies solely with HCC Specialty Underwriters, Inc. ("Specialty Underwriters" or "HCCSU"), a company incorporated and headquartered in Massachusetts, and not with USSIC. ECF 27-3, Walden Decl., ¶¶ 8–9; ECF 27-4, Walden Supp. Decl., ¶ 5; ECF 27-5, Roman Decl., Ex. A.[2]

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[1] At the same time USSIC brought this action, it filed a separate action against Gartner on a second, very similar event cancellation policy. *See* Civil Action No. 4:20-cv-1851. At the time, USSIC did not reveal to the Court that these were "related" cases as required by Local Rule 5.2, and the second case was assigned to Judge Bennett. After this Court issued its August 13 Order, however, USSIC moved to consolidate its second-filed case with this one, now arguing that they are, in fact, related. ECF 32. The Court granted USSIC's motion to consolidate on August 21, 2020. ECF 34.

Gartner's motions to dismiss USSIC's second action had not yet been decided by Judge Bennett before these cases were consolidated. If this Court denies Gartner's motions to dismiss in No. 4:20-cv-1851, the Court should consider this to be a motion to certify the jurisdictional issues in both cases because they are identical.

[2] Gartner submitted six declarations in support of its motion to dismiss (ECF 27-1 – ECF 27-6): the Declaration and Supplemental Declaration of John W. Riley, Gartner's Group Vice President, Internal Audit and Risk ("Riley Decl." and "Riley Supp. Decl."), the Declaration and Supplemental Declaration of George Walden, Aon's Resident Managing Director ("Walden Decl." and "Walden Supp. Decl."), the Declaration of Claudia Kaufman, a Vice President at Aon ("Kaufman Decl."), and the Declaration of Brett Roman ("Roman Decl."). These declarations offer proof of jurisdictional facts and may be considered by the Court on a motion to dismiss under Rule 12(b)(2). *See Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002). For clarity, this brief will reference the declarations by their short titles.

Before the Policy at issue took effect, there were no communications between Gartner (or Aon) and USSIC (or any of its affiliates) in Texas, and Gartner played no role in Specialty Underwriters' decision to issue the Policy under USSIC's name. Riley Decl., ¶¶ 9, 11; Walden Decl., ¶¶ 11–13. Specialty Underwriters (not USSIC) issued the Policy in Massachusetts and delivered it to Gartner in New York, by sending the Policy to Aon. Riley Decl., ¶ 14; Walden Decl., ¶ 15. USSIC did not bill Gartner for the policy premiums; instead, Specialty Underwriters sent invoices for the policy premiums to Aon in New York. Riley Decl., ¶ 12; Walden Decl., ¶ 14. Aon forwarded the bills to Gartner's headquarters in Connecticut; Gartner sent Aon the required payments; and Aon, in turn, sent the premium payments from New York to Specialty Underwriters in Massachusetts. Riley Decl., ¶ 12; Walden Decl., ¶ 14.

In early 2020, the COVID-19 public health emergency began forcing the cancellation of Gartner's shows. Riley Decl., ¶ 16; Walden Decl., ¶ 17. Because the cancellation of events due to the actual or suspected outbreak of a communicable disease is expressly covered by the Gartner policies, Gartner directed Aon to notify Specialty Underwriters of Gartner's claims. Riley Decl., ¶ 16; Walden Decl., ¶ 18. As required by the Policy, Aon sent notices of claims to Specialty Underwriters in Massachusetts, not to USSIC. Riley Decl. ¶¶ 15–16; Walden Decl., ¶¶ 19–20. All of the ensuing communications by Gartner or Aon concerning Gartner's claims were directed to Specialty Underwriters in Massachusetts or its adjusters in England. Riley Decl., ¶¶ 17-19; Walden Decl., ¶¶ 21-25. USSIC was not involved in any of the discussions with Gartner or Aon concerning Gartner's claims or the Policy's coverage before suit was filed.

The only connection the Policy itself has to Texas is that it carries USSIC's name (along with that of Specialty Underwriters), and USSIC maintains its principal place of business in Houston. In fact, the word "Texas" appears only once in the Policy—in the address of USSIC

shown on the cover page. ECF 23-1 at 2. The Policy itself expressly states in bold that its rates and forms "must meet the minimum standards of the *New York* insurance laws and regulations" (emphasis added). *Id*. at 3.

USSIC's opposition to Gartner's motion confirms the accuracy of Gartner's recitation of these critical jurisdictional facts. There is no allegation or proof in USSIC's papers that either Gartner or its broker ever took any action in Texas to procure insurance policies from USSIC or to pursue Gartner's claims before USSIC brought suit.[3] USSIC concedes that throughout the years, Gartner (through Aon) dealt only with Specialty Underwriters (which USSIC calls "HCCSU") in negotiating the terms of Gartner's event cancellation policies. *See* Thompson Decl., ¶ 14, ECF 28-1 at 4) ("HCCSU negotiated the terms of the Policy with Gartner on USSIC's behalf.").[4] This is not surprising since, as USSIC acknowledges, Specialty Underwriters "is in the business of marketing, administering and underwriting insurance policies" for USSIC. *Id*. at ¶ 5.

In fact, USSIC has now revealed the existence of a private inter-company agreement between USSIC and Specialty Underwriters that delegates to Specialty Underwriters the authority to issue policies on behalf of USSIC. *Id*. at ¶ 6. A similar agreement has been in place between Specialty Underwriters and another affiliated insurer, Houston Casualty Company ("HCC"). *Id*.

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[3] Even according to USSIC, the only alleged contact that Gartner or Aon has had with anyone in Texas concerning the disputed policies occurred "shortly after the Complaint was filed" when, according to USSIC's declarant, he understands that Aon contacted two executives of one of USSIC's affiliates. Thompson Decl., ¶ 24, ECF 28-1 at 7. While Gartner would dispute this characterization of what Aon did, for jurisdictional purposes a defendant's contacts with the forum state after suit is filed are irrelevant and should be ignored by the Court. *See Johnston v. Multidata Systems Intern. Corp.*, 523 F.3d 602, 310 (5th Cir. 2008); *Access Telecom, Inc. v. MCI Telecommunications Corp.*, 197 F.3d 694, 717 (5th Cir. 1999).

[4] USSIC submitted the Declaration of Michael Thompson with its opposition to Gartner's motion to dismiss. It is telling that the only declaration submitted by USSIC was made by an employee of Specialty Underwriters. Thompson Decl. at ¶ 24. USSIC did not offer any evidence from USSIC itself or from anyone in Texas.

at ¶ 8. All of the policies that Gartner has procured from Specialty Underwriters in Massachusetts over the years were apparently issued by Specialty Underwriters, initially on behalf of HCC and more recently on behalf of USSIC, under these inter-company agreements. *See Id*. at ¶ 14. There is no suggestion anywhere in USSIC's papers that Specialty Underwriters or anyone else ever put Gartner (or its broker) on notice of the existence or terms of these agreements or any of the limitations they contain with respect to the extent of Specialty Underwriters' authority. USSIC does not assert that Gartner (or its broker) were ever told or had any reason to know that the disputed Policy would need to be approved by USSIC in Houston because of its high limits of coverage. *Id*. at ¶¶ 6–8, 14.

USSIC rests its claim to specific jurisdiction on the fact that Gartner has purchased policies issued in USSIC's name since 2014; each of those policies has identified USSIC, a Houston-based company, as the issuer; and (after they were drafted, negotiated and agreed upon by Specialty Underwriters and Gartner) each of the policies disclosed that they were "executed and attested" by officers of USSIC. ECF 23 at ¶ 12; ECF 28 at 15; Thompson Decl. at ¶ 14. But there is no allegation or proof that these Texas-based officers had any involvement in the negotiation, drafting, issuance or delivery of the Policy, even though their pro forma signatures were stamped on the Policy, or that they or any of their Houston-based colleagues ever communicated with Gartner (or Aon) in any way before USSIC commenced suit.

With respect to the assertion of **general personal jurisdiction**, USSIC acknowledges that Gartner is a Delaware corporation with its principal place of business in Connecticut. ECF 23, ¶ 7. In an effort to show that Gartner is nevertheless "at home" in Texas, USSIC asserts the following additional facts: (a) Gartner maintains an "operational hub" in Irving, Texas that is Gartner's fourth-largest office in the United States and sixth-largest worldwide; (b) Gartner has

described its Irving office as a "hub" for two divisions that account (through activities in Texas and elsewhere) for all of its research business; (c) the research business accounts for 79% of Gartner's overall revenues and "is its biggest driver for growth"; (d) Gartner has 1,260 Texas employees, making up 14% of its U.S.-based workforce; and (e) Gartner has been licensed to do business in Texas for many years, has designated an agent for service of process and pays Texas franchise taxes. ECF 28, at 20–21.[5]

USSIC's brief misleadingly implies that Gartner's *Irving office* is, alone, responsible for 79% of the company's overall revenue. S*ee* ECF 28 at 20. That is not true. *Gartner's entire operations in Texas collectively accounted for only about 4% of Gartner's revenue last year* (compared to 10.7% in California and 5.4% in New York). Riley Decl., ¶ 5. Gartner is a large organization with operations throughout the globe. *Id.*, ¶¶ 4-6. Gartner has 106 different offices, spread all across the world, with offices in 15 different states in the United States and a worldwide workforce of 16,549 people. *Id*, ¶ 6. Gartner's Irving office is smaller than Gartner's headquarters in Stamford, and it is also smaller than Gartner's offices in Fort Myers, Florida and Arlington, Virginia. Riley Supp. Decl., ¶ 9. Nothing USSIC points to, including Gartner's SEC filing, *see* ECF 29-2, contradicts or even calls into question the facts set out in the Riley Declaration.

III. ARGUMENT

In the Fifth Circuit, a district court may certify a request for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) if (1) the order from which the appeal is taken involves a controlling question of law; (2) there is a substantial ground for difference of opinion concerning the issue;

[5] The Annual Report that USSIC cites in support of its jurisdictional allegations, *see* ECF 29-2, does not actually contain all of the facts for which they rely on it: the Report does not describe the role of Irving office in Gartner's research business, either in a vacuum or in relation to Gartner's other offices, and it does not describe Gartner's research business as a "driver for growth." USSIC does not cite any other documents to support its allegations. ECF 28 at 20–21.

and (3) an immediate appeal from the order may materially advance the ultimate termination of the litigation. *See, e.g.*, *Clark-Dietz and Associates-Engineers, Inc. v. Basic Const. Co.*, 702 F.2d 67, 68 (5th Cir. 1983); *Coates v. Brazoria County Tex.*, 919 F. Supp. 2d 863, 867 (S.D. Tex. 2013).

A. The Court's Order on Personal Jurisdiction Involves Controlling Questions of Law.

This case presents two potentially determinative issues of law with respect to personal jurisdiction: whether a Texas court can exercise specific personal jurisdiction over a nonresident policyholder who did nothing within the state to procure its policy, when a domestic insurer asks the court to ratify its disclaimer of coverage; and whether a Texas court can exercise general jurisdiction over a foreign corporation with a principal place of business in another state when the corporation has less than 8% of its worldwide workforce in Texas and generates only about 4% of its revenues in Texas. These are "controlling" questions because if the Fifth Circuit were to reverse this Court's Order on jurisdiction, it would terminate this litigation in Texas. *See Tesco Corp. v. Weatherford Intern., Inc.*, 772 F. Supp. 2d 755, 566 (S.D. Tex. 2010) ("controlling" question is present where it would "clearly have an effect on the future course of the litigation"); *see also Ryan v. Flowserve* Corp, 444 F. Supp. 2d 718, 722 (N.D. Tex. 2006) ("[A] controlling question of law . . . at the very least means a question of law the resolution of which could materially advance the ultimate termination of the litigation—thereby saving time and expense for the court and the litigants."). It is for this reason not surprising that the Fifth Circuit has often entertained interlocutory appeals under § 1292(b) from the denial of motions to dismiss for lack of personal jurisdiction. *See, e.g.*, *Johnston v. Multidata Systems Intern. Corp.*, 523 F.3d 602, 609 (5th Cir. 2008) (finding no jurisdiction); *Growden v. Ed Bowlin and Assoc., Inc.*, 733 F.2d 1149, 1150 (5th Cir. 1984) (same); *Benjamin v. Western Boat Bldg. Corp.*, 472 F.2d 723, 725 (5th Cir. 1973) (same).

B. There is Substantial Ground for a Difference of Opinion on the Jurisdictional Issues.

Because the Court did not explain its Order denying Gartner's motion to dismiss on jurisdictional grounds, Gartner must presume the Court found both of USSIC's claims to jurisdiction to be convincing. Neither approach to jurisdiction promoted by USSIC, however, can be squared with controlling precedent. Thus, there is ground for a substantial difference of opinion. *See, e.g.*, *Coates*, 919 F. Supp. 2d at 868-69 (substantial ground for difference of opinion exists "if a trial court rules in a manner which appears contrary to the rulings of all Courts of Appeal which have reach the issue . . . or if novel and difficult questions of first impression are presented"). The Court's conclusion that specific and general jurisdiction exists over Gartner in Texas runs contrary to well-established Supreme Court principles and Fifth Circuit decisions. USSIC has not offered a single case to support the assertion of personal jurisdiction in this case, and the particular theories of jurisdiction USSIC promotes are in that sense untested and novel.

1. There is no authority for the assertion of specific jurisdiction over a nonresident policyholder who did nothing in the forum state to procure its policy, when the insurer only seeks judicial ratification of its decision to deny coverage.

USSIC does not claim that Gartner did *anything* in Texas to procure the disputed Policy, nor does USSIC dispute that the negotiation, purchase, issuance and delivery of the Policy all occurred in New York (where Aon is located) or Massachusetts (where Specialty Underwriters operates). Instead, USSIC argues it can assert specific personal jurisdiction and drag Gartner into a Texas court, to resolve a dispute about USSIC's duty to pay claims, simply because Gartner has been a USSIC policyholder since 2014 and therefore, according to USSIC, has had a "long-term contractual relationship" with USSIC in Texas. ECF 28 at 12.

USSIC relies mainly on two cases for this extraordinary proposition: *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), and *Central Freight Lines, Inc. v. APA Transport Corp.*,

322 F.3d 376 (5th Cir. 2003). ECF 28 at 12–14. Neither case comes close. In *Burger King*, the Court noted that, without more, contracting with an out-of-state party is not enough to establish jurisdiction. While the Court found that a Michigan franchisee was subject to suit in Burger King's home state of Florida, the Court pointed to many additional factors, including that the franchisee failed to make required payments and misused Burger King's trademarks and confidential business information, "causing foreseeable injuries to the corporation *in Florida*"; the agreement called for the application of *Florida law* and provided that it was "made in and enforced *from Miami*"; and "the Michigan franchisees carried on a continuous course of direct communications" with Burger King *in Miami*. 471 U.S. at 480–81 (emphasis added). Similarly, in *Central Freight*, the Court found that, having "reached out" to Texas to establish a long-term agreement with a local firm, a New Jersey company had "fair warning" that it could be sued in Texas on claims that it breached the contract and committed torts causing injury *in Texas*. 322 F.3d at 385-86.[6]

There is no claim here, much less any proof, that Gartner ever communicated with USSIC in Texas before this case was filed. It is undisputed that all of Gartner's contacts (through Aon, its New York broker) were with Specialty Underwriters in Massachusetts, and that the Policy was issued in Massachusetts by Specialty Underwriters pursuant to a private inter-company agreement between Specialty Underwriters and USSIC. Riley Decl. ¶ 9; Walden Decl. ¶¶ 11–12; Thompson Decl., ¶ 6. USSIC urges that the Policy was approved, executed and attested by USSIC in Houston, and the Policy carries USSIC's name, but USSIC does not point to anything *Gartner* (or its broker) did in Texas with respect to the Policy. ECF 28 at 7–8. Given these undisputed facts, neither

[6] All seven of the other cases USSIC relies upon also involved suits seeking relief against nonresident defendants for their breach of contractual duties owed to resident plaintiffs. *See* ECF 28 at 14 & n.13. USSIC's suit against Gartner, in contrast, seeks only to limit the scope of USSIC's own duty to pay claims under its insurance contract with Gartner.

Burger King nor *Central Freight* would support the assertion of personal jurisdiction over Gartner even if USSIC were alleging that Gartner breached its obligations under the Policy and caused injury in Texas.

But the key point here is that USSIC has not made any claim that Gartner committed a breach or caused any harm in Texas. Instead, USSIC filed this action to seek clarification regarding *its own* obligations under the Policy. In such a case, there is no conceivable basis for exercising specific personal jurisdiction. Even if it was foreseeable to Gartner that Specialty Underwriters would issue the disputed Policy under USSIC's name, as USSIC contends, Gartner had no reason to expect it could be hauled into court in Texas to defend a complaint like this if it merely continued to do business with Specialty Underwriters.

Tellingly, USSIC cites no authority for its unprecedented contention that a nonresident policyholder can be forced into court in the insurer's home state (when there is no allegation that the insured caused injury there) simply because the insured has been a loyal policyholder for a number of years. *See*, *e.g., Federated Rural Elec. Ins. Corp. v. Inland Power and Light Co*., 18 F.3d 389, 395 (7th Cir. 1994) (purchase of insurance from forum state "alone is an insufficient foundation upon which to assert personal jurisdiction"). If that were the rule, loyal Texas policy-holders who have bought policies from the same out-of-state insurer for many years could be hauled into distant courts whenever there is a coverage dispute, even if they never did anything outside of Texas to procure their policies. Such an outcome could not be squared with the reasons why, as a matter of constitutional due process, the Supreme Court has permitted the exercise of personal jurisdiction over nonresidents who purposefully direct their activities toward residents of the forum. As the Court explained in *Burger King*, this rule reflects a state's "manifold interest in providing residents with a convenient forum for redressing injuries inflicted by out-of-state

actors," and it would be unfair to allow a party that benefits from interstate activities to erect a "territorial shield" and "escape having to account in other States for the consequences." 471 U.S. at 473–74 (internal quotation omitted). Neither of these interests is implicated when a resident insurer, such as USSIC, seeks to drag a nonresident policyholder into court in an effort to avoid paying benefits due under a policy—even if the insured has been a policyholder for many years. There is substantial ground for a difference of opinion on specific jurisdiction.

2. This is not an "exceptional" case justifying assertion of general personal jurisdiction over a Delaware corporation with its principal place of business in Connecticut.

There is also substantial ground for a difference of opinion on general jurisdiction. USSIC argues that a Texas court may exercise general jurisdiction over Gartner, a Delaware corporation with its principal place of business in Connecticut, because Gartner is supposedly "at home" in Texas. To support its position, USSIC emphasizes that Gartner maintains a successful "operational hub" in Texas; has 14% of its U.S.-based workforce in Texas; and is registered to do business in Texas, has appointed an agent for service of process there, and pays Texas franchise taxes.[7] ECF 28 at 20–21. USSIC has not pointed to a single case to support its baseless argument that these are "exceptional" circumstances warranting the assertion of general jurisdiction under *Daimler AG v. Bauman*, 571 U.S. 117, 139, n.19 (2014).

On the contrary, these allegations are plainly insufficient after the "sea change" wrought in the Supreme Court's general jurisdiction jurisprudence by *Daimler*. *See BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1560 n. 1 (2017) (Sotomayor, J. concurring in part and dissenting in part). The Supreme Court has recognized only one case that could meet the "exceptional circumstances"

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[7] As noted, USSIC attempts to create the impression that a very large share of Gartner's overall revenues are generated in Texas, ECF 28 at 20, but USSIC does not question Gartner's proof that Texas only accounts for approximately 4% of Gartner's total revenue. *See* Riley Decl., ¶ 5.

requirements the Court articulated in *Daimler*: *Perkins v. Benguet Consol. Mining Co.,* 342 U.S. 437 (1952). *See BNSF*, 137 S. Ct. at 1558; *Patterson v. Aker Sols. Inc.*, 826 F.3d 231, 235 (5th Cir. 2016) (Supreme Court has found general jurisdiction outside of paradigmatic locations "in only one modern case"). That lone case involved a company based in the Philippines that temporarily relocated its headquarters to Ohio during World War II. *Id.* Because Ohio was the "center of the corporation's wartime activities" – the corporation's *de facto* principal place of business – the Court held that the corporation was subject to general jurisdiction in Ohio during the War. *Id.* (quoting *Daimler*, 571 U.S. at 139, n.19). In contrast to *Perkins*, Gartner's presence in Texas is similar to the presence that any large, multi-state corporation would have in a state as large as Texas. There is no dispute that the center of Gartner's activities remains in its Stamford headquarters. *See* Riley Supp. Decl., ¶ 8. The Supreme Court has specifically held that a "corporation that operates in many places can scarcely be deemed at home in all of them." *BNSF*, 137 S. Ct. at 1559.

Cases in this circuit applying *Daimler* and *BNSF* confirm that there is no general jurisdiction over Gartner here. Contrary to USSIC's telling, the court in *Wartsila N. Am., Inc. v. Int'l Ctr. for Dispute Resolution*, 387 F. Supp. 3d 715 (S.D. Tex. 2018), did *not* state that the plaintiff's jurisdictional allegations were "speculative, vague, and overgeneralized." *Compare* ECF 28 at 22. On the contrary, the court assumed that all of the allegations were accurate, because the defendant did not even attempt to controvert them. *Wartsila*, 387 F. Supp. 3d at 731. The court nonetheless found, as it was bound to do under *Daimler* and *BNSF*, that general jurisdiction was lacking, even though the defendant had its regional headquarters in Texas, employed a large number of Texas citizens, and conducted a significant portion of its overall business in Texas. *Id.*

The court in *Garcia Hamilton & Assocs., LP v. RBC Capital Markets, LLC*, --- F. Supp. 3d ---, 2020 WL 3078330 (S.D. Tex. June 10, 2020), similarly found that the plaintiff failed to make a *prima facie* case of jurisdiction based on allegations that the defendant had four offices and 240 employees in Texas, including a division solely focused on Texas clients. *Id.* at *5 (court "not convinced" that defendant's presence was "substantial enough" to create general jurisdiction). USSIC points out that the plaintiff in *Garcia Hamilton* did not provide information to put those allegations in the context of the defendant's overall business, as suggested by the analysis in *BNSF*. ECF 28 at 22. But the contextual information relied on in *BNSF* is precisely the information the Court *does* have in front of it here: it is undisputed that Gartner employs only 14% of its US-based workforce (and less than 8% of its worldwide workforce) in Texas, that the Irving office is only the sixth-largest Gartner office (and fourth-largest in the U.S.), and that Gartner only generated approximately 4% of its total revenue in Texas last year. Riley Decl., ¶¶ 5–6; *compare BNSF*, 137 S. Ct. at 1554 (relying on proportion of revenues, employees, and offices or other physical presence in forum state versus overall). The Supreme Court has made clear a presence like Gartner has in Texas is not "exceptional" and is insufficient to confer general jurisdiction.

C. An Immediate Appeal Will Materially Advance the Ultimate Termination of the Litigation.

When, as in this case, serious issues of personal jurisdiction are presented, interlocutory review under § 1292(b) best serves the fair and efficient administration of justice, conserves the resources of the court and the parties, and avoids the risk that the case will proceed to a decision on the merits, after trial, that (if adverse to Gartner) will be vacated on appeal because this Court could not properly exercise personal jurisdiction over Gartner consistent with the Due Process Clause of the U.S. Constitution. *Bailey v. Zehr*, 2001 WL 803757, at *4 (5th Cir. Jun. 14, 2001) (vacating judgment of district court after jury trial for lack of personal jurisdiction); *Gundle Lining*

Const. Corp. v. Adams County Asphalt, Inc., 85 F.3d 201, 211 (5th Cir. 1996) (vacating district court's grant of summary judgment for lack of personal jurisdiction); *see also Coates*, 919 F. Supp. 2d at 868 (immediate appeal materially advances ultimate termination when it promotes efficiency); *Tesco Corp.*, 722 F. Supp. 2d at 767 (immediate appeal is appropriate where it eliminates the need for trial).

IV. REQUEST FOR A STAY

If the Court grants this motion, Gartner further requests that the Court stay further proceedings in this case (and, now that it has been consolidated, No. 4:20-cv-1851) pending a determination by the Fifth Circuit as to whether it will permit an appeal to be taken from the Order and, if the Fifth Circuit permits the appeal, that the Court stay further proceedings in this case (and No. 4:20-cv-1851) until the Fifth Circuit has issued its mandate. In support of this request, Gartner states as follows:

First: Gartner respectfully submits it has made a strong showing that it will succeed on appeal. USSIC has been unable to offer any support for its assertion that a Houston-based insurer can invoke specific jurisdiction and drag a nonresident insured into court here based solely on the fact that the policyholder has purchased policies written in the name of a Texas carrier for a number of years, when the policyholder took no action in Texas to procure its policies and the insurance company brings suit only to clarify its own obligations to pay claims. USSIC has also not offered a credible argument that Gartner's presence in Texas, where it has a successful hub of operations, presents the kind of "exceptional" circumstances that would warrant the exercise of general jurisdiction. The Due Process Clause of the United States Constitution bars the assertion of personal jurisdiction in this case.

Second: Gartner will be irreparably injured absent a stay because it will be forced to defend two lawsuits (now consolidated) brought in a distant court that lacks personal jurisdiction.

Gartner's witnesses are all in New York and Connecticut. All of the witnesses who could be expected to testify for USSIC with respect to the negotiation, drafting, issuance and delivery of the Policies are located in Massachusetts, where Specialty Underwriters does business. A New York forum is far more convenient to both sides than a court in Texas.

Third: Issuance of a stay will not substantially injure USSIC because USSIC can obtain a clarification of its policy obligations from the Southern District of New York, where Gartner's affirmative case is pending.[8]

Fourth: The public interest favors a stay. Because USSIC's suggested approach to matters of personal jurisdiction in insurance coverage cases, if adopted by the courts, would have far-reaching consequences, exposing nonresident policyholders (both individual and corporate) to a previously unforeseeable risk of being dragged into court in distant states whenever their insurers seek to have a court affirm a denial of coverage, a stay should be granted to allow the Fifth Circuit to issue guidance on the important issues of law presented by Gartner's motion to dismiss. *See State Bank and Trust Co. v. Lil Al M/V*, 2018 WL 10780906, at *3 (E.D. La. Jun. 12, 2018) (public interest is served when issue on appeal is significant and has potential for far-reaching effects and implications). In addition, there are three cases pending in two courts on this matter, all of which involve motions that require the attention of the court. Staying this case would promote judicial efficiency and save this Court from expending additional resources on a case that will, if this appeal is successful, be dismissed. *See Vallejo v. Garda CL Southwest, Inc.*, 2013 WL 6190175, at *8 (S.D. Tex. Nov. 26, 2013) (public interest includes judicial economy).

[8] USSIC has signaled that it intends to move to transfer to this Court the case Gartner brought against USSIC and Specialty Underwriters in the Southern District of New York. ECF 32 at 4 n.1. Gartner will vigorously contest that motion.

In these circumstances, the Court can and should stay further proceedings if it grants Gartner's motion under § 1292(b). *See Nken v. Holder*, 556 U.S. 418, 426 (2009); *Ministry of Oil of the Republic of Iraq v. 1,032,212 Barrels of Crude Oil Aboard the United Kalavrvta*, 2015 WL 851920, at *4 (S.D. Tex. Feb. 26, 2015).

V. CONCLUSION AND PRAYER

For these reasons the Court should grant Gartner's Motion to Certify Personal Jurisdiction Questions for Interlocutory Review under 28 U.S.C. § 1292(b). The Court should also issue a stay of further proceedings in this case and No. 4:20-cv-1851 pending a determination by the Fifth Circuit as to whether it will permit an appeal to be taken from the Order and, if the Fifth Circuit permits the appeal, that the Court stay further proceedings until the Fifth Circuit has issued its mandate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

/s/ Julie A. Hardin
Julie A. Hardin

CERTIFICATE OF CONFERENCE

On August 21, 2020, counsel for Defendant notified counsel for Plaintiff it intended to file this Motion for Certification and inquired whether Plaintiff opposes the Motion. At the time of filing, counsel for Plaintiff has yet to respond.

/s/ Julie A. Hardin
Julie A. Hardin