

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
NO. 2582CV000110

HOME MARKET FOODS, INC.

vs.

AIG SPECIALITY INSURANCE COMPANY & others¹

2/17/26
RECEIVED & FILED
CLERK OF THE COURTS
NORFOLK COUNTY

2/27/26

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT SWISS RE
CORPORATE SOLUTIONS CAPACITY INSURANCE CORPORATION'S
MOTION TO DISMISS THE COMPLAINT**

The Plaintiff Home Market Foods, Inc. (“HMF”) brought this action against various insurance providers alleging breach of contract and violation of G.L. c. 93A after it sustained damages from two related fires in February 2024 at its facility in Norwood, Massachusetts. One of the excess providers, Swiss Re Corporate Solutions Capacity Insurance Corporation (“Swiss Re”), a Missouri company, filed this motion to dismiss arguing that the excess insurance contract between the parties contains a forum selection/choice of law provision providing that all claims must be brought in New York under New York law. The Plaintiff opposes, contending that the clause is unenforceable.

Following a hearing on January 21, 2026, and for the reasons discussed below, Swiss Re’s motion is **DENIED**.

¹ Steadfast Ins. Co., Ascot Specialty Ins. Co., Ascot Syndicate No. 1414, Dale Property Consortium 4873, Houston Casualty Co. UK Branch, Dual Dale MGU, Equinox Underwriting US Property 4883, Lloyd’s Underwriter Syndicate 1KLN 510, Lloyd’s Underwriter Syndicate 1618, Kinsale Ins. Co., Axis Surplus Ins. Co., Swiss Re Corporate Solutions Capacity Ins. Co., Lloyd’s Underwriter Syndicate No. 1886 QBE, Landmark American Ins. Co., and Certain Underwriters at Llyod’s London

BACKGROUND

Swiss Re issued an excess insurance policy to HMF for the period June 30, 2023 to June 30, 2024 (“Excess Policy”). The Excess Policy contained an “Applicable Law and Court Jurisdiction” endorsement that provided:

The laws of the State of New York, without regard to any conflict of laws rules that would cause the application of the laws of any other jurisdiction, shall govern the construction, effect, and interpretation of this insurance agreement.

The parties irrevocably submit to the exclusive jurisdiction of the Courts of the State of New York and to the extent permitted by the law the parties expressly waive all rights to challenge or otherwise limit such jurisdiction.

The Excess Policy also contained a provision requiring any legal action against Swiss Re be brought within twelve months of the loss that is the subject of the disputed claim.

Fires occurred at HMF’s Norwood facility on February 4 and 14, 2024, causing significant property damage and interruption of the company’s production. HMF sought insurance coverage from its various insurance carriers. A dispute arose when the insurers collectively took the view that the fires were separate occurrences and required HMF to pay its deductible twice. The two sides also disagreed about the calculation of loss. The dispute continued into January 2025.

On January 6, 2025, HMF requested that Swiss Re agree to extend the time for HMF to file suit for its claim, to allow additional time to address the parties’ dispute outside of litigation. Swiss Re refused. On January 31, 2025, HMF filed the instant action in this court alleging breach of contract, violation of G.L. c. 176D and c. 93A, and seeking a declaratory judgment as to the various insurers’ rights and duties under the policies.

DISCUSSION

A request for dismissal “based on a forum selection clause is properly considered under Mass. R. Civ. P. 12(b)(6).” Melia v. Zenhire, Inc., 462 Mass. 164, 165 n.2 (2012). See Casavant v. Norwegian Cruise Line, Ltd., 63 Mass. App. Ct. 785, 790 (2005). In assessing a complaint under

Rule 12 (b) (6), a court accepts as true the well-pleaded factual allegations in the complaint and draws all reasonable inferences in the claimant's favor. See Fairhaven Hous. Auth. v. Commonwealth, 493 Mass. 27, 30 (2023).² Swiss Re contends that the parties' forum selection clause mandates exclusive jurisdiction in New York, and therefore the Court should dismiss HMF's complaint against it. HMF opposes, arguing that Massachusetts law, not New York law, governs the dispute and pursuant to G.L. c. 175, § 22, the choice of law and forum selection clauses are unenforceable.

Because the determination as to which state's substantive law shall govern the dispute impacts the enforceability of the forum selection clause, the Court considers first whether the choice of law provision is enforceable. See Oxford Global Resources, LLC v. Hernandez, 480 Mass. 462, 467 (2018). Where Massachusetts is the forum state for this lawsuit, the Court looks to Massachusetts law to determine the enforceability of the choice of law provision. See DraftKings Inc. v. Hermalyn, 118 F.4th 416, 419 (1st Cir. 2024), citing Smith v. General Motors LLC, 988 F.3d 873, 879 n.5 (6th Cir. 2021) (explaining that "even contracts that contain choice-of-law clauses are themselves analyzed under some state's law should a controversy arise over the validity of that clause itself").

General Laws c. 175, § 22 prohibits insurance companies, under certain circumstances, from issuing insurance policies that dictate a forum or provide a choice of law for disputes other than Massachusetts. Specifically, the statute states:

² Swiss Re, which errantly asserts it is bringing the motion also under Mass. R. Civ. P. 12 (b) (1), has submitted matters outside the Complaint in support of its motion. Where such documents were not relied upon in framing the Complaint, the Court could only consider them if it converted Swiss Re's motion to dismiss to one for summary judgment. See Golchin v. Liberty Mut. Ins. Co., 460 Mass. 222, 224 (2011). Swiss Re has not requested that the Court do so and the Court declines to do so on its own accord. Cf. Baby Furniture Warehouse Store, Inc. v. Meubles D & F Ltee, 75 Mass. App. Ct. 27, 29 n.3 (2009).

No company and no officer or agent thereof shall make, issue or deliver any policy of insurance . . . containing any condition, stipulation or agreement depriving the courts of the commonwealth of jurisdiction of actions against it . . . or providing that any such policy or contract made in the commonwealth on lives, property or interests therein shall be governed by the laws of any state or country other than this commonwealth. Any such condition, stipulation or agreement shall be void.

G.L. c. 175, § 22. Under these terms, an insurer is only prohibited from making, issuing, or delivering a policy with a choice of law provision if the policy is “made in the Commonwealth.” Thus, if the Excess Policy at issue here was “made in the Commonwealth,” the choice of law provision would not be enforceable and the policy would be interpreted under Massachusetts law.

The Complaint alleges that HMF has its principal place of business in Massachusetts; that the property that was the subject of the policy and location of the loss is in Massachusetts; the policy was issued to cover HMF’s property in Massachusetts; and that Swiss Re transacts business in Massachusetts. From such allegations, the Complaint plausibly suggests the Excess Policy was made in the Commonwealth. Swiss Re has not directed the Court to any allegations in the Complaint or language in the policy itself stating the policy was made in another forum.³ Therefore, based on what is before the Court here and for the purpose of this motion, the Court concludes G.L. c. 175, § 22 applies to the Excess Policy, and therefore Massachusetts law governs the dispute.⁴

³ Although Swiss Re’s written arguments did not address whether the Excess Policy was “made in the Commonwealth,” it has submitted a declaration averring that Swiss Re has its principal place of business in New York, that is not an admitted insurer in Massachusetts, and that it is “an insurer that underwrites property and casualty insurance policies in various states of the United States and is licensed to issue insurance in New York.” Decl. of Patrick McNichols at pars 5-7. Even if the Court were to consider the declaration in its analysis, it would at most create a dispute of fact as to whether the Excess Policy was “made in the Commonwealth.”

⁴ Even if § 22 did not apply to the choice of law provision, the provision may still be unenforceable if it is contrary to public policy. A choice of law provision may be contrary to public policy if:

As noted above, section 22 provides that “[n]o company and no officer or agent thereof shall make, issue or deliver any policy of insurance . . . containing any condition, stipulation or agreement depriving the courts of the commonwealth of jurisdiction of actions against it.” Swiss Re argues three reasons that, even if Massachusetts law applies, section 22 does not invalidate the forum selection clause mandating that New York has “exclusive jurisdiction” over any dispute.

First, Swiss Re contends that the word “company” in section 22 only applies to insurers admitted in Massachusetts and does not apply to “unauthorized companies” like Swiss Re. See G.L. c. 175, § 168(a) (defining “unauthorized company” as “an insurer not licensed to engage in the business of insurance in the commonwealth”). The Court is not persuaded by this argument. Nothing in the language of section 22 suggests that the Legislature intended to limit the statute’s prohibition to “unauthorized companies” as opposed to all companies providing insurance policies. See Gravito v. Commonwealth, 496 Mass. 756, 759 (2025) (a court’s analysis of the statute “begins with the principal source of insight into legislative intent — the plain language of the statute”). A court does not “read into the statute a provision which the Legislature did not see fit to put there, nor add words that the Legislature had an option to, but chose not to include.” Commonwealth v. Dones, 492 Mass. 291, 297 (2023) (citation omitted).

(a) the chosen state has no substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties’ choice, or (b) [where] application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state [in the determination of the particular issue] and is the State whose law would apply . . . in the absence of an effective choice of law by the parties.

Oxford Global Resources, LLC, 480 Mass. at 469 (citations and quotations omitted). Whether the choice of law provision here is contrary to public policy cannot be resolved on this motion.

Clearly, if the Legislature intended the limitation Swiss Re suggests, it could have included such language in section 22. Indeed, elsewhere in section 22 where the Legislature intended to limit the statute's application, it did so with limiting language. See G.L. c. 175, § 22 (limiting the choice of law prohibition to policies or contracts "made in the Commonwealth"). Section 22 does not use the term "unauthorized company," and the Court is not persuaded by Swiss Re's argument at the hearing that the second paragraph's distinction between a "domestic insurer" and a "foreign insurer" betrays an intent of the Legislature to exempt non-Massachusetts companies providing insurance policies to entities in Massachusetts from section 22. That language in section 22 merely states the following:

The foregoing provisions shall apply to any group or non-group policy of insurance delivered, issued or renewed, by any domestic insurer under the authority of this chapter, or by any alien or foreign insurer to the extent such policies cover persons having a residence within the commonwealth, or to any employee health plan of any company or other business entity where the company or business entity is a self-insurer of such employee health plan

G.L. c. 175, § 22. In other words, whereas section 22 appears to clearly state it applies to insurers both foreign and domestic, Swiss Re's argument fails. See also G.L. c. 175, § 1 (defining "company," as used in the relevant section of section 22, as "all corporations, associations, partnerships or individuals engaged as principals in the business of insurance including reciprocal exchanges.).

Likewise, the Court does not agree with Swiss Re's argument that G.L. c. 175, § 168's provisions for providing a special insurance broker's license to an "unauthorized company" somehow changes the Court's analysis or the meaning of section 22's text. Section 168(a) defines an "unauthorized company" as "an insurer not licensed to engage in the business of insurance in the Commonwealth." However, nothing in the language of this section – focused on the methods

by which an unlicensed insurer can obtain a special broker's license, and attendant requirements on policies those companies issues – changes or obviates the provisions of section 22.

Swiss Re's second argument fares no better. It contends that pursuant to G.L. c. 175, § 224, HMF is a "large commercial policyholder" and therefore section 22 does not apply to it.⁵ See G.L. c. 175, § 224(b) ("As they relate to the regulation of policy form and content and the filing, approval and fixing and establishing of rates, . . . chapter 175 . . . shall not apply to a contract of insurance issued to a large commercial policyholder"). A policy holder must meet several criteria to be considered a "large commercial policyholder." See G.L. c. 175, § 224 (defining "large commercial policyholder" as one who "has aggregate property and casualty insurance premiums of \$30,000 excluding workers' compensation, which has certified that it elects to be treated as a large commercial policyholder and understands the limited regulatory oversight that the election connotes and has certified that it meets 2 of the following criteria"). At this stage, looking solely at HMF's Complaint, there are no facts before the Court that would allow it to conclude that HMF meets these criteria. Even if there were, it is not clear that section 224 nullifies the application of section 22, where the language of section 224 appears to be focused on "the limited regulatory oversight" of large commercial policyholders and the policies insurers issue to them, and not the viability of forum selection clauses in insurers' policies. G.L. c. 175, §§ 224(a)-(b).

Finally, Swiss Re argues that that section 22 does not apply because the forum selection clause at-issue does not "depriv[e] the courts of the commonwealth of jurisdiction of actions against it." See G.L. c. 175, § 22. Rather, Swiss Re suggests, the Court may exercise its jurisdiction over the case insofar as it uses that jurisdiction to hear Swiss Re's motion to dismiss and,

⁵ Swiss Re raised this argument for the first time at oral argument on the motion. The bulk of its – and the Plaintiff's – contentions regarding section 224 are contained in their post-hearing memoranda. See Papers # 39 and 40.

presumably, enforce the parties' agreement to have all disputes litigated in New York. In support of its argument, Swiss Re relies on DiMercurio v. Sphere Drake Ins., PLC, 202 F.3d 71 (1st Cir. 2000), which involved an arbitration clause in an insurance policy mandating "arbitration of all coverage disputes in [England]." 202 F.3d at 73. There, the insured argued that the arbitration clause was unenforceable under G.L. c. 175, § 22, because it deprived the courts of the Commonwealth of jurisdiction. Id. at 73-74. After a long walk through the history and changing interpretations of arbitration clauses generally, and international arbitration clauses specifically, the First Circuit ruled that an arbitration clause in an insurance policy does not deprive the Massachusetts courts of jurisdiction and therefore was not prohibited under G.L. c. 175, § 22. Id. at 74-77. After all, the First Circuit explained, a court must have subject-matter jurisdiction both to refer a case to arbitration and confirm an arbitration award. Id. at 76-77. However, that court recognized, arbitration agreements are considered "contractual arrangements for resolving disputes rather than as an appropriation of a court's jurisdiction." Id. at 76. In other words, an arbitration provision is not comparable to a forum selection clause such as the one at-issue here, and Swiss Re's reliance on DiMercurio is misplaced. While the Court acknowledges Swiss Re's attempts to make painfully clear that it is not attempting to divest the courts of this Commonwealth of *jurisdiction*, and that its argument is simply over *venue*, Swiss Re has not cited any authority concluding that section 22 does *not* apply to forum selection clauses in insurance policies.

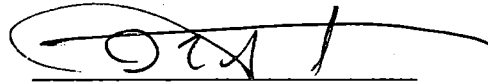
Even if Swiss Re could show section 22 does not apply in this case, the forum selection clause may still be invalid if enforcement of the provision is not "fair and reasonable." Jacobson v. Mailboxes Etc. U.S.A., Inc., 419 Mass. 572, 575 (1995). "A party resisting the enforcement of a forum selection clause must establish that 'trial in the contractual forum will be so gravely difficult and inconvenient that he will for all practical purposes be deprived of his day in court.'"

Boland v. May International Company, 81 Mass. App. Ct. 817, 825 (2012), quoting The Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 18 (1972). Here, HMF has raised several significant issues that it would face if it were forced to litigate in New York as opposed to Massachusetts. Whether such difficulties make enforcement of the forum selection clause unfair and unreasonable is best determined on a fuller record.

ORDER

For the foregoing reasons, it is hereby **ORDERED** the Defendant Swiss Re Corporate Solutions Capacity Insurance Corporation's Motion to Dismiss the Complaint is and shall be **DENIED**.

Dated: February 17, 2026

A handwritten signature in black ink, appearing to read "Ira L. Gant", written over a horizontal line.

Ira L. Gant
Justice of the Superior Court