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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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AIG SPECIALTY INSURANCE
COMPANY, an Illinois
corporation, as subrogee of
Global Loss Prevention, Inc.

Plaintiff,

v.

IRON MOUNTAIN MINES, INC. and
JOHN H. McKINLEY, as
Administrator of the Will and
Estate of Theodore W. Arman,
Deceased,

Defendants.

CIV. NO. 2:15-00798 WBS DAD

ORDER

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Plaintiff AIG Specialty Insurance Company brought this
action under § 112(c)(2) of the Comprehensive Environmental
Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§
9601-9675, against defendants Iron Mountain Mines, Inc. ("IMMI")
and John H. McKinley to seek recovery of costs incurred in
response to the releases and disposal of hazardous substance for

1 which defendants were previously found liable. Plaintiff now
2 moves for an order permitting service on IMMI through the
3 California Secretary of State.¹ (Docket No. 11.)

4 Federal Rules of Civil Procedure 4(h) and 4(e) allow
5 service on a corporation in accordance with the law of the state
6 where the district court is located or where service is made.
7 Fed. R. Civ. P. 4(e)(1), (h). Under California Civil Procedure
8 Code section 416.10, a summons may be served on a corporation by
9 delivering it to the person designated as the agent for service
10 or to one of the corporation's officers. Cal. Civ. Proc. Code §
11 416.10(a), (b). However, California Corporations Code section
12 1702(a) provides that (1) if an agent has resigned, cannot be
13 found, or has not been designated, and (2) if process cannot be
14 served with reasonable diligence upon the designated agent or
15 upon the corporation under sections 416.10(a) or (b), the court
16 may issue an order permitting service by personal delivery to the
17 Secretary of State. Cal. Corp. Code § 1702(a). Federal courts
18 in the Ninth Circuit have applied the section 1702(a) exception.
19 See, e.g., Accor Franchising N. Am v. Elohim Enter., Civ. No.
20 2:12-762 GEB CKD, 2013 WL 310407, at *1 (E.D., Cal. Jan. 25,
21 2013); Pension Trust Fund for Operating Eng'rs v. Kickin Enter.,
22 Civ. No. 11:3685 JCS, 2012 WL 6711557, at *3-4 (N.D. Cal. Dec.
23 20, 2012); Pence v. Union Fid. Mortg., Civ. No. 08-89 WQH JMA,
24 2008 WL 5102242, at *1 (S.D. Cal. Dec. 2, 2008).

25 Section 1702(a) applies in this case. First, IMMI's
26 designated agent for process is believed to be deceased, (Clary


27 ¹ This motion was determined to be suitable for decision
28 without oral argument pursuant to Local Rule 230(g).

1 Decl. ¶ 4; Noelly Decl. ¶ 4), making service on this individual
2 impossible. Neither was plaintiff able to serve officers of the
3 corporation. On plaintiff's behalf, First Legal Support Services
4 made several attempts to locate and serve those officers at the
5 business's address listed with the California Secretary of State.
6 (See Clary Decl. Exs. A, C.) First Legal Support was unable to
7 locate the entity or anyone affiliated with the entity. (Clary
8 Decl. ¶2.) Plaintiff's counsel Alan C. Nolley also attempted to
9 find a current address for IMMI and its agents by searching
10 various public and social networking databases and directories,
11 but was unsuccessful. (Nolley Decl. ¶3.) Based on these
12 attempts, the court is satisfied that plaintiff has exercised
13 reasonable diligence in attempting to serve IMMI's agent and
14 officers.

15 IT IS THEREFORE ORDERED that plaintiff's motion for an
16 order allowing service on IMMI through the Secretary of
17 California be, and the same hereby is, GRANTED.

18 IT IS FURTHER ORDERED that the hearing set for June 15,
19 2015 be, and the same hereby is, VACATED.

20 Dated: June 10, 2015

21 
22 **WILLIAM B. SHUBB**
23 **UNITED STATES DISTRICT JUDGE**