

NOT FOR PUBLICATIONUNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEYTOKIO MARINE & NICHIDO FIRE
INSURANCE CO. LTD.,

Plaintiff,

v.

FLASH EXPEDITED SERVICES, INC.,

Defendant.

CIVIL ACTION NO. 11-6109 (MLC)

O P I N I O N

THE PLAINTIFF, Tokio Marine & Nichido Fire Insurance Co. Ltd. ("Tokio Marine") brings this action as subrogee for its insured, Nikon, Inc. ("Nikon"), against the defendant, Flash Expedited Services, Inc. ("Flash"). (See generally dkt. entry no. 1, Compl.) The action is governed by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706, et seq. ("Carmack Amendment"). (See id. at ¶ 3.) See also 49 U.S.C. § 14706(a)(1).

THE COURT earlier ordered the parties to show cause why the action should not be transferred to the United States District Court for the Southern District of Ohio. (See dkt. entry no. 20, 10-24-12 Order to Show Cause ("OTSC") at 5.) Both parties have responded to the OTSC; only Tokio Marine opposes transfer. (See dkt. entry no. 21, Flash Resp. to OTSC; dkt. entry no. 22, Tokio Marine Resp. to OTSC.) The Court now resolves the OTSC on the papers. See L.Civ.R. 78.1(b).

In reaching this conclusion, the Court notes but gives little weight to Tokio Marine's choice of forum because Tokio Marine is not a citizen of the forum state. (See Compl. at ¶ 1 (showing that Tokio Marine is a corporation deemed to be a citizen of New York).) See also Piper Aircraft Co. v. Reyno, 454 U.S. 235, 255-56 (1981); Windt v. Qwest Commc'ns Int'l, Inc., 529 F.3d 183, 190 (3d Cir. 2008); Hoffer v. InfoSpace.com, Inc., 102 F.Supp.2d 556, 573 (D.N.J. 2000) ("The choice of forum by a plaintiff is simply a preference; it is not a right."). The Court also notes that Flash does not oppose transfer of the action to the Southern District of Ohio. (See Flash Resp. to OTSC at 1-2.) See also Jumara, 55 F.3d at 879.

THE COURT also gives little weight to Tokio Marine's choice of forum because it appears that Tokio Marine's claims arose in Ohio. See Nat'l Prop. Investors VIII v. Shell Oil Co., 917 F.Supp. 324, 327 (D.N.J. 1995) (stating that plaintiff's venue choice is entitled to less deference "when the central facts of a lawsuit occur outside of the chosen forum"). The action concerns Flash's liability for loss of the Load, which was transported only so far as and then stolen in Ohio. (See generally Compl.)

SEVERAL OTHER of the Jumara factors weigh neither in favor or nor against transfer. "The convenience of witnesses and the location of books and records are a non-issue; discovery was

completed without undue burden on either party. Further . . . no witnesses are located in Ohio and an inspection of the truck stop in Jefferson, Ohio is not required." (Tokio Marine Resp. to OTSC at 5.) But it nonetheless appears that the United States District Court for the Southern District of Ohio has the stronger interest in deciding the action, based upon "the local interest in deciding local controversies at home". See Jumara, 55 F.3d at 879.

THE COURT, for good cause appearing, will grant the OTSC and issue an appropriate Order.

s/ Mary L. Cooper

MARY L. COOPER
United States District Judge

Date: November 15, 2012