

1 The Miller Act provides: “A civil action brought under this subsection must be
2 brought – . . . in the United States District Court for any district in which the contract was to be
3 performed and executed, regardless of the amount in controversy.” 40 U.S.C. § 3133(b)(3).
4 Courts have interpreted the provision as providing venue in any district in which the prime
5 contract between the United States and the general contractor is performed. U.S. ex rel.
6 Straightline Corp. v. CNA Surety, 411 F. Supp.2d 584, 585 (W.D. Pa. 2006). Where, as here,
7 the government project is in a foreign country, courts uniformly find that the subcontractor
8 retains its right to sue on a payment bond under the Miller Act even if there is no judicial district
9 that satisfies that statute’s venue provision. U.S. ex rel. Skip Kirchdorfer, Inc. v. M.J. Kelley
10 Corp., 995 F.2d 656, 659 (6th Cir. 1993); U.S. ex rel Bryant Elec. Co., Ltd. v. Aetna Cas. &
11 Surety Co., 297 F.2d 665, 669 (2nd Cir. 1962); U.S. ex rel. Bailey-Lewis-Williams of Fla., Inc.
12 v. Peter Kiewit Sons Co. of Canada Ltd., 195 F. Supp. 752, 755-56 (D.D.C. 1961). Where suit
13 may be brought in such circumstances is not entirely clear, however. Defendant, relying on U.S.
14 ex rel. Norshield Corp. v. E.C. Scarborough, 620 F. Supp.2d 1292 (M.D. Ala. 2009), argues that
15 suit must be brought in the district where defendant has its principal place of business. Neither
16 the Norshield court nor plaintiff identify any statutory or other binding authority that limits
17 venue in a foreign-project Miller Act case to defendant’s home state. The legislative history of
18 the Miller Act suggests that the current version of the venue provision was motivated by a desire
19 to make it easier for suppliers and subcontractors to obtain payment on the bond by allowing
20 multiple suits where the work actually occurred. U.S. ex rel. Brown Minneapolis Tank Co. v.
21 Kinley Constr. Co., 816 F. Supp.2d 1139, 1161 (D.N.M. 2011). Arbitrarily limiting venue to
22 defendant’s principal place of business would, far from furthering that goal, make it even harder
23 for local craftsman to recover for unpaid work. The Court declines to adopt the choice of venue
24 analysis in Norshield and instead follows the general venue provisions of 28 U.S.C. § 1391 as
25 the Second Circuit did in Bryant Electric, 297 F.2d at 669.

1 For purposes of this litigation, venue is proper under § 1391 in any judicial district
2 in which “defendant is subject to the court’s personal jurisdiction with respect to the civil action
3 in question.” 28 U.S.C. § 1391(b)(1) and (c)(2). Thus, the personal jurisdiction analysis is
4 dispositive of defendant’s venue argument, and plaintiff has the burden of demonstrating that the
5 Court may exercise personal jurisdiction over defendant. In re W. States Wholesale Natural Gas
6 Antitrust Litig., 715 F.3d 716, 741 (9th Cir. 2013). In evaluating defendant’s jurisdictional
7 contacts, the Court accepts uncontroverted allegations in the complaint as true. Menken v.
8 Emm, 503 F.3d 1050, 1056 (9th Cir. 2007). If a jurisdictional fact is disputed, however,
9 plaintiffs cannot rely on the bare allegations of the complaint and must come forward with
10 additional evidence. Marvix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir.
11 2011). Conflicts in the evidence provided by the parties must be resolved in plaintiff’s favor.
12 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004). Because the
13 Court did not hear testimony or make findings of fact, plaintiff “need only make a prima facie
14 showing of jurisdiction to withstand a motion to dismiss.” Wash. Shoe Co. v. A-Z Sporting
15 Goods, Inc., 704 F.3d 668, 671-72 (9th Cir. 2012) (internal quotation marks omitted).

16 Pursuant to Fed. R. Civ. P. 4(k)(1)(A), federal courts ordinarily follow state law
17 when determining the extent to which they can exercise jurisdiction over a person. Daimler AG
18 v. Bauman, ___ U.S. ___, 134 S. Ct. 746, 753 (2014). The Washington Supreme Court has held
19 that, despite the rather narrow language used in Washington’s long-arm statute, RCW 4.28.185,
20 the statute “extends jurisdiction to the limit of federal due process.” Shute v. Carnival Cruise
21 Lines, 113 Wn.2d 763, 771 (1989). The Court therefore need determine only whether the
22 exercise of jurisdiction comports with federal constitutional requirements. Easter v. Am. W.
23 Fin., 381 F.3d 948, 960 (9th Cir. 2004).

24 In order to justify the exercise of jurisdiction over a non-resident under the federal
25 constitution, plaintiff must show that defendant had “certain minimum contacts with [the forum]
26

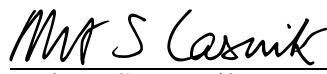
1 such that the maintenance of the suit does not offend traditional notions of fair play and
2 substantial justice.” Int’l Shoe Co v. Washington, 326 U.S. 310, 316 (1945) (internal quotation
3 marks omitted). Two different categories of personal jurisdiction have developed, namely
4 “general jurisdiction” and “specific jurisdiction.” “A court may assert general jurisdiction over
5 foreign (sister-state or foreign-country) corporations to hear any and all claims against them
6 when their affiliations with the State are so ‘continuous and systematic’ as to render them
7 essentially at home in the forum State.” Goodyear Dunlop Tires Operations, S.A. v. Brown, ___
8 U.S. ___, 131 S. Ct. 2846, 2851 (2011) (quoting Int’l Shoe, 326 U.S. at 317). Specific
9 jurisdiction, on the other hand, “focuses on the relationship among the defendant, the forum, and
10 the litigation” and exists when “the defendant’s suit-related conduct [creates] a substantial
11 connection with the forum State.” Walden v. Fiore, ___ U.S. ___, 134 S. Ct. 1115, 1121 (2014)
12 (internal quotation marks and citations omitted). Plaintiff asserts that the Court has general
13 jurisdiction over defendant in this case.

14 Plaintiff identifies five facts from which it argues that defendant is subject to the
15 general jurisdiction of Washington courts: (1) defendant is registered to do business here;
16 (2) defendant has been registered to do business here since 1909; (3) defendant has 217 agents
17 registered to sell insurance in Washington, 79 of whom have offices here; (4) defendant earned
18 over \$53 million in premiums from Washington accounts in the last four years; and
19 (5) defendant has sued and been sued in this district in the last decade. Whether these facts are
20 considered individually or together, they do not establish that defendant is “at home” in
21 Washington. The Supreme Court has recently made clear that the type of contacts that will make
22 a corporation subject to jurisdiction for all purposes are, for both practical and fairness reasons,
23 generally limited to the place of incorporation and principal place of business. “Those
24 affiliations have the virtue of being unique – that is, each ordinarily indicates only one place – as
25 well as easily ascertainable. These bases afford plaintiffs recourse to at least one clear and
26

1 certain forum in which a corporate defendant may be sued on any and all claims.” Daimler AG,
2 134 S. Ct. at 760 (internal citations omitted). If the sale of insurance policies having nothing to
3 do with plaintiff’s cause of action would be sufficient to allow the exercise of general
4 jurisdiction in this instance, defendant would presumably be subject to suit in every state based
5 on a policy sold to its principal for a project in Cuba. “Such exorbitant exercises of all-purpose
6 jurisdiction would scarcely permit out-of-state defendants to structure their primary conduct with
7 some minimum assurance as to where that conduct will and will not render them liable to suit.”
8 Id. at 761-62 (internal quotation marks omitted).²

9 Defendant is a Pennsylvania corporation with its principal place of business in
10 New York. Although it conducts approximately 1% of its business in Washington, it cannot be
11 deemed “at home” in the forum under Daimler AG. General jurisdiction over defendant does
12 not, therefore, exist. Because a determination regarding proper venue necessarily led to the
13 conclusion that the Court lacks the power to exercise control over defendant (Leroy v. Great W.
14 United Corp., 443 U.S. 173, 180 (1979)), this action is hereby DISMISSED without prejudice to
15 its being refiled in one of the two districts in which defendant resides.

16
17 Dated this 3rd day of September, 2014.

18 
19 Robert S. Lasnik
20 United States District Judge

21
22
23
24

25 ² The fact that courts in Washington have exercised specific jurisdiction over defendant in cases
26 arising out of insurance policies issued to residents of this state is irrelevant to the question of whether
defendant is subject to this Court’s jurisdiction for all purposes.