

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**RAMON LEVESQUE and** )  
**F/V JULIE & JILL,** )  
 )  
**Plaintiff** )  
 )  
**v.** )  
 )  
**F/V ATLANTIC DAWN, In Rem, and** )  
**DARYL LOVELLETTE, SAMUEL A.** )  
**MARTIN and ATLANTIC CATCH,** )  
**INC., In Personam,** )  
 )  
**Defendants** )

**Civil No. 90-0213 P**

**RECOMMENDED DECISION ON DEFENDANT ATLANTIC CATCH, INC.'S  
MOTION TO DISMISS AMENDED COMPLAINT**

Defendant Atlantic Catch, Inc. ("Atlantic Catch"), a Maryland corporation, moves to dismiss the instant admiralty lawsuit against it for lack of personal jurisdiction. Alternatively, it indicates its willingness to have the court transfer the action to federal district court in Maryland.<sup>1</sup> For the reasons enumerated below, I recommend that the case be transferred.

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<sup>1</sup> Defendant Samuel A. Martin has filed a similar motion. That motion, however, is not ripe for decision because the court has permitted a period of limited discovery on the issue of jurisdiction over the person of defendant Martin. See Docket #23.

## I. APPLICABLE LAW

The instant lawsuit, in which the plaintiff seeks to recover for damages arising from the alleged collision of the F/V Atlantic Dawn and the F/V Julie & Jill on August 18, 1990, is premised on admiralty law. In a federal-question case such as this, "` jurisdiction over the person of the defendant is limited by the scope of the process available to the Court." *Merrill v. Zapata Gulf Marine Corp.*, 667 F. Supp. 37, 39 (D. Me. 1987). Congress can provide for nationwide service of process, *see* Fed. R. Civ. P. 4(e); if it does so, constitutional due process requirements are satisfied by "` minimum contacts" with any part of the United States. *Johnson Creative Arts, Inc. v. Wool Masters, Inc.*, 743 F.2d 947, 950 (1st Cir. 1984). In the absence of such a statute, the long-arm statute of the forum state governs service of process. Fed. R. Civ. P. 4(e); *Omni Capital Int'l v. Rudolf Wolff & Co.*, 484 U.S. 97, 107-08 (1987). The parties agree that no federal statute confers nationwide service of process in the instant case. *See* Memorandum of Law in Support of Defendants' Motions to Dismiss for Lack of Personal Jurisdiction ("` Defendants' Memorandum") at 2, 4-5; Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction ("` Plaintiff's Memorandum") at 2. The exercise of personal jurisdiction hence is governed by Maine's long-arm statute, 14 M.R.S.A. ' 704-A, which permits jurisdiction over nonresidents to the full extent allowed by the due process clause of the Fourteenth Amendment. *See, e.g., Caluri v. Rypkema*, 570 A.2d 830, 831 (Me.), *cert. denied*, 111 S.Ct. 62 (1990). To meet due process requirements, a defendant must have minimum contacts with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

## II. FACTS

The burden is on the plaintiff to prove facts necessary to sustain jurisdiction. *Dalmau Rodriguez v. Hughes Aircraft Co.*, 781 F.2d 9, 10 (1st Cir. 1986). The court may weigh affidavits and other relevant materials to assist it in finding jurisdictional facts. 5A C. Wright & A. Miller, *Federal Practice and Procedure* 1351 at 253-56 (1990). At the pretrial stage, the plaintiff need only make out a *prima facie* showing; any conflicts between the plaintiff's and the movant's affidavits must be resolved in favor of the plaintiff. *Triple-A Baseball Club Assoc. v. Northeastern Baseball, Inc.*, 655 F. Supp. 513, 533-34 (D. Me.), *aff'd in part, rev'd in part on other grounds*, 832 F.2d 214 (1st Cir. 1987), *cert. denied*, 485 U.S. 935 (1988).

Resolving all conflicts in favor of the plaintiff, the affidavits submitted by the parties establish the following facts. Atlantic Catch is a Maryland corporation with its principal place of business in Ocean City, Maryland. Affidavit of David Martin to Support Atlantic Catch, Inc.'s Motion to Dismiss ("Martin Affidavit") & 2. Atlantic Catch solely owns the F/V Atlantic Dawn, a wooden-hull fishing dragger that fishes from the port of Ocean City, Maryland. *Id.* Atlantic Catch has not consented to suit in Maine; in receiving process in the instant action, it expressly reserved the right to contest personal jurisdiction. *Id.* & 12.

Atlantic Catch decided early in the summer of 1990 to send the Atlantic Dawn to fish off the waters of New England and authorized the master of the vessel to make calls in Portland, Maine. *Id.* & 4. Prior to July 8, 1990 the Atlantic Dawn never had called at any ports in Maine. *Id.* & 5. The Atlantic Dawn called at the Port of Portland to offload fish and buy fuel and stores on July 8, 10-11 and 18, August 8-11 and 18, and September 4, 1990. *Id.*; Affidavit of Michael X. Savasuk in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction ("Svasuk Affidavit") && 2, 4. The Atlantic Dawn on most of its calls in Portland docked for less than 24 hours and is thought never to have remained more than 48 hours on any one call. Martin

Affidavit & 6. Atlantic Catch grossed a total of \$21,403.11 from all sales of fish offloaded at the Portland Fish Exchange. *Id.* & 7. The Atlantic Dawn departed Maine's waters on September 4, 1990, and Atlantic Catch does not intend to send the vessel to Maine in the future. *Id.* & 8. Atlantic Catch has conducted no business in Maine other than the previously described sales of fish in Portland. *Id.* & 9. It has not solicited or conducted any other business in Maine by officers, employees, agents, mail or any other means of communication. *Id.* It has not sought or been required to obtain a license to do business in Maine. *Id.* Atlantic Catch never has had an office in Maine, neither owns nor has used any real estate in Maine and has never acted as a director, manager, trustee or other officer of any corporation incorporated in or having a principal place of business in Maine. *Id.* & 10. It has neither contracted to supply services or things in Maine nor caused a tortious act to occur here. *Id.* & 11.

The collision that is the subject of this lawsuit occurred approximately 16.8 miles outside of the 3-mile limit of Maine's territorial waters and 7.8 miles outside of the 12-mile limit of United States territorial waters. Affidavit of Captain Michael J. Monroe ("Monroe Affidavit") & 7. The Julie & Jill was anchored when struck by a passing vessel about midnight on August 18, 1990; the plaintiff thereafter discovered blue paint chips on the bow of his vessel. Affidavit of Ramon Levesque in Support of Plaintiff's Opposition to Defendant's Motion to Dismiss for Lack of Personal Jurisdiction ("Levesque Affidavit") & 2. The plaintiff noticed the Atlantic Dawn in the Port of Portland on or about September 3, 1990 and observed that its hull was missing paint of the same color as the chips he found on the Julie & Jill. *Id.* The United States Coast Guard conducted an investigation the same day, taking statements from crew members of the Atlantic Dawn. *Id.* The Julie & Jill was surveyed for damage and repaired in Maine. *Id.* && 4-5. In addition, the plaintiff obtains most of his fishing and engine equipment, as well as engine service, in Maine. *Id.* & 3.

### III. ANALYSIS

Under *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), due process requirements are satisfied when a nonresident defendant has sufficient contacts with a forum to permit the assertion of jurisdiction according to "traditional conceptions of fair play and substantial justice." *Id.* at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). "[T]he defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). A meaningful contact does not require the defendant's physical presence within the forum but may result from the defendant's "purposeful availment" of the privilege of conducting activities in that forum. *Burger King*, 471 U.S. at 475-76. This assures that "a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts. . . ." *Id.* at 475 (citations omitted).

The Supreme Court has recognized two types of personal jurisdiction -- specific and general. If a suit arises out of or relates to the defendant's forum contacts, it is a case of specific jurisdiction requiring simply that the relationship among the defendant, the forum and the litigation form a fair and reasonable foundation for the exercise of jurisdiction over the defendant. *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984); *Hughes v. K-Ross Building Supply Center, Inc.*, 624 F. Supp. 1136, 1137 (D. Me. 1986). When the suit is unrelated to or does not arise out of the defendant's forum contacts, the stricter standard for general jurisdiction must be met, requiring "continuous and systematic" contacts with the forum state. *Helicopteros*, 466 U.S. at 414-16; *Hughes*, 624 F. Supp. at 1137.

#### A. Specific Jurisdiction

The plaintiff argues that Atlantic Catch's contacts support specific jurisdiction because its purposeful fishing activities were directly connected to the collision. Plaintiff's Memorandum at 5. The plaintiff conceives the collision as part of the entire commercial venture, which necessarily required the traversing of waters contiguous to Maine. *Id.* at 6.

The Supreme Court in *Helicopteros* declined to explain the distinction between contacts arising out of and relating to the forum state. 466 U.S. at 415-16 n.10. However, the Court apparently relied on a law review article, *id.* at 414 n.8, whose authors define related contacts as those "intimately related to . . . the affiliating circumstances on which the jurisdictional claim is based." Von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1144-45 (1966) (footnote omitted). The Court of Appeals for the First Circuit describes the kinds of contacts enabling specific jurisdiction as those bearing "a direct relation to" the underlying cause of action. *Sandstrom v. Chemlawn Corp.*, 904 F.2d 83, 88 (1st Cir. 1990).

The collision that is the subject of this action did not arise from Atlantic Catch's contacts with Maine. An action arising from forum contacts, as I understand it, would directly stem from the defendant's activities within the forum -- for example, a barrel of fish rolling from the dock onto the head of a passing plaintiff. This instant collision, by contrast, occurred outside of Maine's territorial waters. *See Petroleum Servs. Holdings, Inc. v. Mobil Exploration & Producing Servs., Inc.*, 680 F. Supp. 492, 495 (D.R.I. 1988), *aff'd*, 887 F.2d 259 (1st Cir. 1989). Nor, though the question is closer, is the accident intimately or directly related to Atlantic Catch's Maine contacts. Assuming *arguendo* that the Atlantic Dawn is the vessel that collided with the Julie & Jill, it is true that the collision would not have occurred but for Atlantic Catch's decision to send its vessel fishing off the coast of Maine. However, the causal link is too attenuated to describe an intimate relationship. The Atlantic Dawn had concluded its call in Maine and departed the state at the time of the incident, much as if it were a

travelling sales representative crossing the border into Massachusetts. The available evidence ties none of the actions of the vessel or her crew while in Maine to the subsequent collision out-of-state. On these facts, the Maine contacts and the collision are best viewed as discrete incidents, occurring during the same voyage but demarcated in time, space and causation.

## **B. General Jurisdiction**

The plaintiff contends that Atlantic Catch's contacts with Portland are sufficient to confer general jurisdiction in that the Atlantic Dawn purposely made Portland its home port for the summer of 1990. Plaintiff's Memorandum at 8. The plaintiff argues that the vessel's 10 days in port were continuous and systematic in the context of an ongoing fishing, as opposed to land-based, operation. *Id.* Finally, the plaintiff insists that subjecting Atlantic Catch to Maine's jurisdiction comports with notions of fair play and substantial justice in that the corporation intentionally benefitted from Maine's laws and jurisdiction and could not be said to be unfairly surprised to be called upon to defend suit there. *Id.* at 10-11.

The plaintiff's depiction of a reciprocal relationship between Atlantic Catch and the state of Maine is appealing. However, a court must analyze the question of general jurisdiction by determining first whether minimum contacts exist. *Donatelli v. National Hockey League*, 893 F.2d 459, 464-65 (1st Cir. 1990). Only if such contacts exist should a court consider them in light of other factors to determine if jurisdiction would offend notions of fair play and substantial justice. *Id.* In the instant case, I find that Atlantic Catch lacks minimum contacts with the state of Maine. Atlantic Catch docked in Maine waters for 10 days in the summer of 1990, comprising by my count six calls, sold \$21,403.11 worth of fish and bought fuel and supplies there. There is no evidence of any other contact with Maine -- offices, agents, solicitations, real estate, contracts, licenses or tortious acts.

Courts have declined to confer general jurisdiction over nonresident corporations with similarly sparse contacts in cases involving maritime accidents outside of the forum state's territorial waters. *See, e.g., Petroleum Services*, 680 F. Supp. at 495-96 (presence of support office in state for a little less than one year insufficient); *Liaw Su Teng v. Skaarup Shipping Corp.*, 1984 A.M.C. 781, 1983 WL 675 (E.D. La.), *rev'd on other grounds*, 743 F.2d 1140 (5th Cir. 1984) (three calls to Louisiana ports between 1977 and 1980 insufficient). These holdings are in keeping with the tenor of *Helicopteros*, in which the Supreme Court determined that a nonresident corporation's contacts were insufficiently continuous and systematic to permit the assertion of general jurisdiction even though the corporation had travelled to the forum to negotiate a contract, had purchased helicopters from forum sellers at regular intervals and had sent personnel to the forum for training. Atlantic Catch has fewer contacts with Maine.

#### IV. TRANSFER

Atlantic Catch seeks dismissal from the instant case but in the alternative is willing to have the court transfer the entire case to Maryland district court pursuant to 28 U.S.C. ' 1406(a). In this case, transfer seems appropriate and fair. Transfer under ' 1406(a) may be ordered only to cure defects in venue. *See, e.g., Freund v. Fleetwood Enterprises, Inc.*, 745 F. Supp. 753, 755 (D. Me. 1990). Venue in this case is governed not by 28 U.S.C. ' ' 1391-92 but by general admiralty practice. *See, e.g., Gipromer v. SS Tempo*, 487 F. Supp. 631, 633 (S.D.N.Y. 1980). Admiralty practice merges venue and jurisdictional analyses; if personal jurisdiction is lacking, venue is lacking. *Id.* This forum lacks personal jurisdiction over defendant Atlantic Catch. Hence, venue is improper.

Section 1406(a) allows a district court to transfer a case to a division `` in which it could have been brought," rather than dismiss, ``if it be in the interest of justice." Transfer is just in this case.

This action could have been brought in the District of Maryland, where the defendants concede that personal jurisdiction lies. Defendants' Memorandum at 9. The plaintiff's mistake as to venue is understandable, given the uncertainty involved in determining whether this forum possessed jurisdiction over Atlantic Catch. Finally, transfer would avert the hardship to the plaintiff of having to refile this action in Maryland district court.<sup>2</sup> See *Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466 (1962) ("The problem which gave rise to enactment of the section [1406(a)] was that of avoiding the injustice which had often resulted to plaintiffs from dismissal of their actions merely because they had made an erroneous guess with regard to the existence of some elusive fact of the kind upon which venue provisions often turn.")

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<sup>2</sup> The plaintiff chose not to address the defendants' motion for alternative relief, including transfer, in his filings with this court. However, Atlantic Catch, as sole owner of the Atlantic Dawn, would appear to be of vital importance to the plaintiff's lawsuit. Prosecuting this case here without Atlantic Catch presumably would not be a viable alternative.

## V. CONCLUSION

For the foregoing reasons, I recommend that this court TRANSFER this case to the United States District Court for the District of Maryland.

### NOTICE

*A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Portland, Maine this 11th day of January, 1991.*

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*David M. Cohen  
United States Magistrate Judge*