

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SWERLING MILTON WINNICK PUBLIC
INSURANCE ADJUSTERS, INC.
Plaintiff

v.

No. 1:26-cv-12095

VELOCITY RISK UNDERWRITERS, LLC
Defendant

**REPLY OF VELOCITY RISK UNDERWRITERS, LLC TO DEFENDANT'S
OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

Plaintiff Swerling Milton Winnick Public Insurance Adjusters, Inc. ("Plaintiff" or "SMW") respectfully submits this Reply to Defendant's Opposition to Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction.

A. This Court May Exercise Personal Jurisdiction Over Velocity.

Specific personal jurisdiction over a defendant exists if "(1) the litigation arises out of defendant's contacts with the forum; (2) those contacts were voluntary and purposeful such that involuntary presence before the forum's courts was foreseeable; and (3) it is reasonable taking into account considerations of fairness." *Stratus Techs. Bermuda Ltd v. EnStratus Networks, LLC*, 795 F. Supp. 2d 166, 168 (D. Mass. 2011) (citing *U.S. v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 620-621 (1st Cir. 2001)). Where a jurisdictional determination is "made at the inception of the litigation," the Court should apply the "prima facie approach," and determine "whether the plaintiff[s] ha[ve] proffered facts that, if credited, would support all findings essential to personal jurisdiction." *Putnam v. EPR Props.*, No. 25-1857, 2026 WL 1141779, at *4 (1st Cir. Apr. 28, 2026) (quoting *Ward v. AlphaCore Pharma, LLC*, 89 F.4th 203, 208–09 (1st Cir. 2023)).

Velocity is registered to do business in the Commonwealth of Massachusetts. **Exhibit 1**, Business Entity Summary. Velocity is on the Massachusetts Division of Insurance list of approved surplus lines carriers. **Exhibit 2**, Authorized Surplus Lines Companies. Velocity insures property in Massachusetts; however, the number of policies and identities of insureds is not publicly available information. SMW intends to seek jurisdictional discovery directed at learning the extent of Velocity's use of the Endorsement in Massachusetts.¹

Soliciting business in Massachusetts and writing insurance policies in Massachusetts constitutes voluntary and purposeful contacts with the Commonwealth of Massachusetts such that it would be foreseeable to Velocity that it could be subject to suit in Massachusetts. *See, e.g., Stratus Techs.*, 795 F. Supp. 2d at 168 (sending marketing materials to 361 persons and providing services to five Massachusetts customers established minimum contacts).

Although the one Velocity-insured entity identified specifically in the Complaint is a Rhode Island entity, SMW is a Massachusetts corporation which offers its services to adjust insurance losses in the Commonwealth for citizens of Massachusetts. SMW is being prevented from providing services to Velocity's Massachusetts insureds by Velocity's unfair and unlawful conduct, specifically its use of the Anti-Public Adjuster Endorsement. Through this litigation, SMW is seeking the protection of Massachusetts courts from this conduct. This litigation is thus related to Velocity's contacts with the forum state.

Moreover, "Massachusetts has a significant interest in providing a forum for its residents to seek redress for serious injuries caused by out-of-state actors." *Flaherty v. Amigos Del Mar Ltd.*, 793 F. Supp. 3d 233, 244 (D. Mass. 2025) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985)). SMW, a Massachusetts entity, is losing the

¹ Plaintiff is filing a motion for leave to take jurisdictional discovery concurrent with this reply.

opportunity to adjust the Club's loss, and losing the opportunity to gain additional exposure to the members of the Club and build goodwill with them by exhibiting its expertise in insurance adjusting. Further, every time one of Velocity's Massachusetts insureds suffers a loss and does not retain a public adjuster because of the Endorsement, Velocity is impacting commerce in Massachusetts, and specifically impacting SMW by reducing its pool of prospective clients. Velocity's use of the Endorsement has a direct economic impact in Massachusetts.

Plaintiff's choice of forum is entitled to deference. *Id.* (citing *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 718 (1st Cir. 1996)). There would be nothing fundamentally unfair about subjecting Velocity to suit in Massachusetts. It voluntarily does business here and has been doing so since at least 2015. It has not even attempted to make a showing that it would be in any way burdensome to defend itself here.

D. SMW is Likely to Succeed on the Merits of Its Claims.

Velocity has purported to incorporate its Memorandum of Law in support of its Motion to Dismiss into its Opposition in its entirety, in an attempt to bypass the Court's applicable page limits and put Plaintiff in the position of having to attempt to respond to two twenty-page briefs in a single five-page reply memo.² Any arguments not explicitly raised in Velocity's Opposition should not be considered on the instant motion. Plaintiff will respond to the Motion to Dismiss within the time permitted by the Rules.

Instead of addressing the merits of SMW's claims in its opposition, Velocity's main focus is on whether SMW has shown that it will be irreparably harmed if the requested injunction is not

² Fed. R.Civ. P. 10(c) permits the incorporation by reference of statements contained in a pleading into any other pleading or motion. Pleadings are defined by Rule 7 as: a complaint; and answer; and answer to a counterclaim; an answer to a crossclaim; a third party complaint; and answer to a third party complaint; and a reply to an answer. Memoranda of law are not pleadings. *Martinez v. Petrenko*, No. 12-CV-331-JD, 2012 WL 6552804, at *3 (D.N.H. Dec. 14, 2012) ("A motion is not a pleading"). Under Local Rule 7.1, memoranda in support of or in opposition to a motion are not to exceed 20 pages without leave of court.

granted. As Velocity recognizes, it is not only the loss of a single contingent fee that SMW would earn from the Club because it is being prevented from adjusting that loss, SMW will suffer the loss of the goodwill, exposure, and referral opportunities that would follow from adjusting a high value, high profile loss. Velocity complains that these harms are hypothetical, and cites that as a reason that they should not be given weight. But that is exactly why injunctive relief is warranted. SMW cannot know the extent of lost opportunities and harm to its goodwill that is ongoing as a result of Velocity's use of the Endorsement. *See, e.g. Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12 (1st Cir. 1996) (granting preliminary injunction where plaintiff's inability to sell particular brand of leaded crystal would likely result in lost sales of other wedding registry items, alienation of future brides, and harm to its reputation, the value of which could not be accurately quantified). “[H]arm to goodwill, like harm to reputation, is the type of harm not readily measurable or fully compensable in damages—and for that reason, more likely to be found ‘irreparable.’” *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 915 (1st Cir.1989).

The fact that SMW could be compensated *in part* by money damages for the harm caused by Velocity's wrongful conduct does not render injunctive relief unavailable. The requested remedies are not mutually exclusive. *See, e.g., Oxford Global Resources, Inc. v. Guerriero*, 2003 WL 23112398, at *11 (D. Mass. Dec. 30, 2003) (stating that damages can be calculated for goodwill, but they would not “fully capture” the loss because it involves not just loss of sales, “but lost reputation”).

C. Velocity Provides No Support for its Claim of Expected Harm if the Requested Injunction is Granted.

Velocity appears to willfully misconstrue the scope of the injunction that is requested in this case. The requested injunctive relief applies only to Velocity's conduct vis a vis one single, identifiable prospective client, the Club. *See* Doc. No. 15 at 17, 19-20. The relief requested is that

the Court enjoin Velocity from directly or indirectly interfering with the relationship between SMW and the Club with respect to the Club's desire to retain SMW as its public adjuster, specifically by threatening the Club with cancellation of its insurance coverage or asserting that the Endorsement on the Policy is valid and enforceable. It does not seek a "sweeping nationwide injunction."

Plaintiff's claim for declaratory relief similarly only seeks an adjudication of the rights and obligations of the parties before the Court. *See* Doc. No. 15 at 25-26. This Court's decision may come to be seen as persuasive precedent on the point, but Plaintiff has no illusions that this one action will result in a nationwide ban on the Anti-Public Adjuster Endorsement.

Accordingly, Velocity's catastrophizing over the expected impact on its business if the Court grants the requested injunction is purely performative. Moreover, it is not supported by any evidence—Velocity provides no documentation, affidavits or declarations that support its self-serving claim that the injunction would affect something like a "dramatic" interference with "the ordinary business relations between global competitors in a major industry." Doc. No. 14 at 13.

D. The Court is Not Limited to Admissible Evidence In Ruling on A Motion for a Preliminary Injunction.

Velocity's arguments that SMW "submitted no concrete evidence" on certain points, or that it relies on hearsay, lack of personal knowledge, or "unsupported generalizations" are not a supportable basis on which to deny Plaintiff's motion. It is well settled that, on a motion for a preliminary injunction, the Court may "accept as true 'well-pleaded allegations in the complaint and uncontroverted affidavits,'" as well as "otherwise inadmissible evidence, including hearsay." *178 Lowell St. Operating Co., LLC v. Nichols*, 152 F. Supp. 3d 47, 53 (D. Mass. 2016) (quoting *Rohm & Haas Elec. Materials, LLC v. Elec. Circuits*, 759 F.Supp.2d 110, 114, n. 2 (D.Mass.2010)

Elrod v. Burns, 427 U.S. 347, 350, n.1 (1976); *Asseo v. Pan American Grain Co., Inc.*, 805 F.2d 23, 26 (1st Cir.1986)).

Applying this standard, everything before the Court supports Plaintiff's claims. The Policy and Anti-Public Adjuster Endorsement are before the Court and speak for themselves. Mr. Winnick's affidavit is based on his own personal knowledge of the facts set forth therein, and on his extensive experience as a licensed public adjuster with over forty years' experience in the field. Mr. Winnick was able to base a very broad estimate as to the dollar value of the damage to the Club (between \$500,000 to \$1 million) on his experience as a public adjuster, but obviously he cannot provide any more specific analysis because he is barred from adjusting the loss by Velocity. His affidavit is uncontroverted by any evidence whatsoever from Velocity. Likewise, the pleading submitted from a similar case against Velocity in Florida, while hearsay, contains many specific allegations that support the factual allegations in the instant case and may be considered by the Court in ruling on the instant motion.

For the foregoing reasons, Plaintiff Swerling Milton Winnick Public Insurance Adjusters, Inc. respectfully requests that its motion be granted.

Dated: May 28, 2026

Respectfully submitted,
Plaintiff,
Swerling Milton Winnick Public Insurance
Adjusters, Inc.,
By its counsel,

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CERTIFICATE OF SERVICE

I, Jeffrey P. Allen, certify that the foregoing document was served on all counsel of record by the Court's CM/ECF system on this date.

Jeffrey P. Allen