

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO: 8:25-cv-03199

CHURCH OF GOD FLORIDA
STATE OFFICES, INC.,

Plaintiff,

v.

MT. HAWLEY INSURANCE COMPANY,

Defendant.

**PLAINTIFF’S, CHURCH OF GOD FLORIDA STATE OFFICES, INC.,
RESPONSE IN OPPOSITION TO DEFENDANT’S, MT. HAWLEY
INSURANCE COMPANY, MOTION TO TRANSFER VENUE**

Plaintiff, Church of God Florida State Offices, Inc. (“Church of God”), by and through its undersigned counsel, respectfully submits this Response in Opposition to Defendant’s Motion to Transfer Venue (“Motion to Transfer”) [D.E. 8] filed by Mt. Hawley Insurance Company (“Mt. Hawley”) and states as follows:

I. Introduction

1. Church of God originally sued Mt. Hawley for breach of insurance policy contract in the 13th Judicial Circuit of Hillsborough County, Florida. [D.E. 1, Exhibit 2].

2. In the Complaint, Church of God alleges it is a Florida Corporation, and that its property located in Hillsborough County, Florida sustained storm damage. *Id.*

3. Mt. Hawley removed this case to Federal Court on November 19, 2025 [D.E. 1].

4. Mt. Hawley then filed its Motion to Transfer Venue and Brief in Support [D.E. 8] on November 26, 2025.

5. Mt. Hawley seeks to remove this Florida insurance dispute from the Middle District of Florida based solely on a boilerplate forum-selection endorsement embedded in a surplus lines insurance policy covering Florida property, issued to a Florida insured, and regulated by Florida's insurance code and public policy.

6. Defendant's Motion to Transfer elevates form over substance and asks this Court to disregard Florida's compelling interest in adjudicating insurance disputes involving Florida property, Florida insureds, and Florida regulatory law.

7. Although Mt. Hawley relies heavily on decisions enforcing similar clauses, the Motion ignores critical distinctions present here: (1) the fundamentally local nature of first-party Florida property insurance disputes; (2) the strong public policy embodied in Florida's insurance statutes governing claims handling and insurer conduct; and (3) the inequitable and unreasonable effect of enforcing a non-negotiated forum clause that would deprive a Florida insured of meaningful access

to a local forum. For these reasons, and as set forth below, Defendant has failed to demonstrate that transfer is warranted under 28 U.S.C. § 1404(a).

II. Applicable Law

Candidly, counsel for the Plaintiff recognizes that in Florida, forum selection clauses are routinely enforced, including in this District and even in favor of the very same Defendant in this case. While forum-selection clauses are generally enforceable, they are not absolute. Even under *Atlantic Marine Construction Co. v. U.S. District Court*, 571 U.S. 49 (2013), a court must decline enforcement where extraordinary circumstances or overriding public interests are present. *Id.* at 52, 59.

Importantly, *Atlantic Marine* does not eliminate judicial scrutiny, it merely alters the § 1404(a) analysis. Courts must still examine whether enforcement would contravene a strong public policy of the forum state or effectively deprive the plaintiff of its day in court.

The Eleventh Circuit has long recognized that forum-selection clauses may be set aside where enforcement would be unreasonable, unjust, or contrary to public policy. See *Krenkel v. Kerzner Int'l Hotels Ltd.*, 579 F.3d 1279, 1281 (11th Cir. 2009). Factors for evaluating the enforceability of a forum selection clause were laid out in *Krenkel*:

Forum-selection clauses are presumptively valid and enforceable unless the plaintiff makes a “strong showing” that enforcement would be unfair or unreasonable under the circumstances. See *Carnival Cruise Lines, Inc. v.*

Shute, 499 U.S. 585, 593–95, 111 S.Ct. 1522, 1527–28, 113 L.Ed.2d 622 (1991); *M/S Bremen v. Zapata Off–Shore Co.*, 407 U.S. 1, 10, 92 S.Ct. 1907, 1913, 32 L.Ed.2d 513 (1972). A forum-selection clause will be invalidated when: (1) its formation was induced by fraud or overreaching; (2) the plaintiff would be deprived of its day in court because of inconvenience or unfairness; (3) the chosen law would deprive the plaintiff of a remedy; or (4) enforcement of the clause would contravene public policy. *Lipcon*, 148 F.3d at 1296 (citing *Shute*, 499 U.S. at 594–95, 111 S.Ct. at 1528). In determining whether there was fraud or overreaching in a non-negotiated forum-selection clause, we look to whether the clause was reasonably communicated to the consumer. A useful two-part test of “reasonable communicativeness” takes into account the clause’s physical characteristics and whether the plaintiffs had the ability to become meaningfully informed of the clause and to reject its terms.

Church of God’s position that the four *Krenkel* factors exist in this case and the forum selection clause should be invalidated in this matter. Notably, the conjunction joining the four *Krenkel* factors is “or” not “and”. Use of the word “or” suggests that if any one of the four factors are satisfied or applicable, the forum selection clause should be invalidated. Plaintiff argues that all four factors are present. In the interests of equity, the forum selection clause in this case should be invalidated and Church of God be permitted to continue to litigate this case here in this District.

III. Argument

A. Enforcement of the Forum-Selection Clause Contravenes Florida’s Strong Public Policy Governing Insurance Disputes.

Florida has a well-established public policy interest in regulating insurance claims involving Florida property and Florida insureds. Florida's insurance statutes impose specific duties on insurers regarding claims handling, payment practices, and insurer conduct. Certain insurer duties were created by Florida to protect Florida policyholders and the public at large.

The Eleventh Circuit has consistently held that forum-selection clauses, while presumptively valid, are not automatically enforceable and must yield where enforcement would be unreasonable or contrary to public policy. In *Krenkel v. Kerzner Int'l Hotels Ltd.*, the Eleventh Circuit reaffirmed that a forum-selection clause may be invalidated where enforcement would be unfair or unreasonable, including where it would effectively deprive a party of its day in court or contravene public policy. *Krenkel*, 579 F.3d at 1281. The court emphasized that enforceability depends on the circumstances of the particular case, not mechanical application.

In *Gillen v. United Services Automobile Ass'n*, 300 So. 2d 3, 6 (Fla. 1974) the Florida Supreme Court emphasized that insurance contracts are “imbued with public interest” and are regulated to protect insureds. The Court in *Gillen* stated “[p]ublic policy requires this Court to assert Florida's paramount interest in protecting its own from inequitable insurance arrangements.” *Id.*

The dispute between Church of God and Mt. Hawley arises from alleged failure to pay benefits owed under a policy insuring a Florida property located in

Hillsborough County. Florida courts have recognized that such disputes are inherently local and implicate Florida's regulatory interests. Transferring this case to New York, a jurisdiction with absolutely no ties to the Parties to this suit, would require a foreign forum to adjudicate issues governed by Florida's insurance regulatory framework, undermining Florida's interest in enforcing its own insurance laws.

As enforcement of the forum selection clause in this case would contravene Florida Public Policy, Mt. Hawley's Motion to Transfer should be denied.

B. The Forum-Selection Clause Was Not Freely Negotiated and Operates as a Contract of Adhesion.

Defendant states on page 3 of its Motion to Transfer that the forum selection clause "was contracted for by Plaintiff and Mt. Hawley," but that simply is not the case. The clause at issue was not the product of an arm's-length negotiation. It appears in a standardized endorsement drafted unilaterally by Mt. Hawley and imposed on the insured as a condition of coverage. Plaintiff had no meaningful opportunity to negotiate venue and no realistic opportunity to confer with Mt. Hawley on its willingness to modify the clause. The Plaintiff did not have "the ability to become meaningfully informed of the forum selection clause and to reject its terms," prior to it becoming a part of the subject policy. While discovery has not been conducted in this case, Plaintiff most certainly would not have seen the forum selection clause until after the Policy was already issued and the forum selection

decided before Plaintiff even knew about. This left Plaintiff with no choice but to accept it or lose coverage.

It is interesting that the Defendant's home state of Illinois was not the unilateral chosen forum either. Neither Party to this lawsuit has any connection with New York. Yet, Defendant's forum selection was more than likely picked as it favors the Defendant in the cause of action pled in this case.

In *Pappas v. Kerzner Int'l Bahamas Ltd.*, the Eleventh Circuit explained that even under federal law, courts must consider whether enforcement would be unjust in light of unequal bargaining power and the practical burdens imposed on the resisting party. *Pappas v. Kerzner Int'l Bahamas Ltd.*, 585 F. App'x 962, 965–66 (11th Cir. 2014). Here, the clause is embedded in a standardized insurance endorsement and offered on a take-it-or-leave-it basis.

Courts routinely consider lack of bargaining power and adhesive contract formation when evaluating enforceability. *Bremen*, 407 U.S. at 12–13. Enforcing the forum selection clause in this case would reward insurers for embedding litigation-detering provisions in separate endorsements while shifting the economic burden of enforcement to insureds least able to bear it.

Here, Defendant uses its unfair bargaining power to slide forum selection clauses into its policies without its insureds seeing and agreeing to the precise wording of it ahead of time. Then, when an insured sues Defendant in the insured's

own state, which makes perfect sense as the location of the insured property, witnesses, evidence of damage and loss, Defendant then drags its insureds to a faraway state, where their lawyers may not follow. Thus, Defendant obtains for itself an undue advantage in contravention of the public policy or statutory considerations in the home state of its own, premium-paying insureds.

Church of God avers that the non-negotiated forum selection clause was the product overreach as defined by *Krenkel* as Plaintiff did not have the ability to become meaningfully informed of the forum selection clause and to reject its terms prior to it becoming a part of the subject policy. As such, the Defendant's Motion to Transfer should be denied.

C. Transfer Would Effectively Deprive Plaintiff of Its Day in Court.

While Mt. Hawley asserts that transfer merely changes geography, the practical effect is far more significant. Plaintiff is a Florida religious organization with no operational nexus to New York. Forcing litigation in New York imposes substantial financial and logistical burdens, including retention of out-of-state counsel and travel for witnesses familiar with the Florida property and loss.

The Supreme Court *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 18 (1972) has made clear that forum-selection clauses are unenforceable where they impose such grave inconvenience that a party is effectively denied access to the courts. *Bremen*, 407 U.S. at 18. That risk is present here as the insured's ability to

retain or obtain representation after the move to New York is significantly affected with no ties to New York. Plaintiff's counsel is not admitted to practice in New York, nor is anyone at counsel's small firm. Plaintiff does not know any attorneys in New York and has no guarantee of retaining one. Whether the Plaintiff will be deprived of its day in court remains to be seen, but it is by no means assured that it will not be so deprived. As such, the Court should invalidate the forum selection clause and allow the Plaintiff to remain in this District.

D. Public Interest Factors Weigh Against Transfer.

Even under *Atlantic Marine*, courts must consider public interest factors. Those factors favor keeping this case in Florida. Florida has a strong interest in resolving disputes involving Florida property and Florida insurance practices. Florida courts routinely handle first-party property insurance disputes and are familiar with the factual and legal landscape. Florida jurors, not New York jurors, have a legitimate interest in adjudicating disputes affecting their community and local property.

Mt. Hawley's argument that New York's interest in enforcing contracts outweighs Florida's regulatory interests oversimplifies the inquiry and disregards the localized nature of insurance disputes. While the Policy references New York law, Florida courts routinely apply foreign law when necessary; that factor does not

outweigh Florida's regulatory and local interests. As such, the Motion to Transfer should be denied.

E. Defendant's Cited Authority is not Dispositive.

Mt. Hawley relies on a lengthy catalog of transfer orders from various jurisdictions. However, the existence of prior enforcement decisions does not force this Court to ignore its obligation to conduct an analysis of the facts present in this specific case. The Eleventh Circuit requires courts to examine the circumstances of each case, including public policy, fairness, and practical impact. *Krenkel*, 579 F.3d at 1281.

Many of the cited cases with prior transfer orders did not involve the same insured profile, regulatory considerations, or public policy concerns present here. Moreover, repetitive enforcement of a clause does not transform it into an unassailable provision immune from scrutiny.

Lastly, 28 U.S.C. § 1404(a) language starts with “[f]or the convenience of parties and witnesses,” which enforcing a forum selection clause that was unilaterally placed into the Policy without the informed consent of the Insured is in complete contravention of the language, purpose and intent of section 1404(a). Transferring this matter to New York where none of the Parties, Witnesses, Property and Evidence is located is not consistent with the language of the code.

IV. Conclusion

Based on the reasons provided above, the forum-selection clause here would contravene Florida public policy, impose undue hardship on a Florida insured, and undermine the State's interest in regulating insurance claims arising within its borders. For these reasons, Defendant's Motion to Transfer Venue should be denied.

Respectfully submitted,

/s/ Thomas Eross Jr. _____

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CERTIFICATE OF SERVICE

I hereby certify that on December 17th, 2025, the foregoing was filed with the Clerk of the Court via the CM/ECF system. I further certify that a true and correct copy of the foregoing has been furnished this day via Electronic Mail to:

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