IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MARNAVI SpA, as agent for JILMAR SHIPPING S.A.,	:	
Plaintiff,	:	
v.	:	Civ. No. 08-00389-SLR-LPS
DONALD P. KEEHAN, ARLENE KEEHAN, ADVANCED POLYMER SCIENCES, INC., ADVANCED POLYMER COATINGS, LTD f/k/a ADVANCED POLYMER COATINGS LLC,	:	
Defendants.	:	

ORDER REGARDING JURISDICTIONAL DISCOVERY

Pending before me is the Motion to Dismiss filed by individual defendants Donald J. Keehan and Arlene Keehan (the "Individual Defendants" or "Keehans"). (Docket Item ("D.I.") 68 and, hereinafter, "Motion") Plaintiff, Marnavi SpA as agent for Jilmar Shipping, S.A. ("Plaintiff" or "Marnavi"), not only opposes the Motion; it also seeks, in the alternative, the opportunity to take jurisdictional discovery. (D.I. 85) For the reasons discussed below, I **GRANT** Plaintiff's request for jurisdictional discovery and will defer making a recommendation on disposition of the Individual Defendants' Motion until after such discovery is completed.

I. THE PARTIES' CONTENTIONS

Plaintiff filed its complaint on June 25, 2008. (D.I. 1) The complaint alleges that, in 1997, Marnavi entered into an agreement with Defendant Advanced Polymer Sciences, Inc. ("APS") by which APS would supply and supervise the application of Siloxirane to the cargo

tanks of a tanker called the Joran. (D.I. 1 ¶¶ 11, 47, 51) Marnavi further alleges that APS (among other defendants) "botched" the sealing job and, thereafter, defendants, including the Individual Defendants, pursued a strategy of corporate "shape-shifting" to avoid having to pay Marnavi for the damages that resulted. (*See, e.g., id.* ¶¶ 1, 5, 84-94.)

By their Motion, the Keehans seek dismissal of the complaint on the grounds that: (1) pursuant to Federal Rule of Civil Procedure 12(b)(2), this Court lacks personal jurisdiction over them; (2) pursuant to Federal Rule of Civil Procedure 12(b)(5), there has been insufficient service of process; and (3) pursuant to Federal Rule of Civil Procedure 12(b)(6), the complaint fails to state a claim upon which relief can be granted. In response, Marnavi disputes each of these contentions. Marnavi also requests that, should the Court determine there is any merit to the Keehans' assertion that the Court lacks personal jurisdiction over them, Marnavi be permitted to take jurisdictional discovery. The Keehans oppose this request.

II. LEGAL STANDARDS

A. Motion to Dismiss Pursuant to Rule 12(b)(2)

Federal Rule of Civil Procedure 12(b)(2) directs the Court to dismiss a case when it lacks personal jurisdiction over the defendant. Determining the existence of personal jurisdiction pursuant to a long-arm statute requires a two-part analysis. First, the Court analyzes the long-arm statute of the state in which the Court is located. *See Intel Corp. v. Broadcom Corp.*, 167 F. Supp. 2d 692, 700 (D. Del. 2001). Next, the Court determines whether exercising jurisdiction over the defendant in this state comports with the Due Process Clause of the Constitution. *See id.* Due Process is satisfied if the Court finds the existence of "minimum contacts" between the

non-resident defendant and the forum state, "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted).

Once a jurisdictional defense has been raised, the plaintiff bears the burden of establishing, by a preponderance of the evidence and with reasonable particularity, the existence of sufficient minimum contacts between the defendant and the forum to support jurisdiction. *See Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n*, 819 F.2d 434, 437 (3d Cir. 1987); *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61, 66 (3d Cir. 1984). To meet this burden, the plaintiff must produce "sworn affidavits or other competent evidence," since a Rule 12(b)(2) motion "requires resolution of factual issues outside the pleadings." *Time Share,* 735 F.2d at 67 n.9; *see also Philips Electronics North America Corp. v. Contec Corp.*, 2004 WL 503602, at *3 (D. Del. Mar. 11, 2004) ("After discovery has begun, the plaintiff must sustain [its] burden by establishing jurisdictional facts through sworn affidavits or other competent evidence.").

B. Motion to Dismiss Pursuant to Rule 12(b)(5)

Federal Rule of Civil Procedure 12(b)(5) provides that a defendant may ask the Court to dismiss a complaint when a plaintiff has failed to properly serve the defendant with the summons and complaint.

C. Motion to Dismiss Pursuant to Rule 12(b)(6)

Evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) requires the Court to accept as true all material allegations of the complaint. *See Spruill v. Gillis*, 372 F.3d 218, 223 (3d Cir. 2004). "The issue is not whether a plaintiff will ultimately prevail but

whether the claimant is entitled to offer evidence to support the claims." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997) (internal quotation marks omitted). Thus, the Court may grant such a motion to dismiss only if, after "accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief." *Maio v. Aetna, Inc.*, 221 F.3d 472, 481-82 (3d Cir. 2000) (internal quotation marks omitted).

However, "[t]o survive a motion to dismiss, a civil plaintiff must allege facts that 'raise a right to relief above the speculative level on the assumption that the allegations in the complaint are true (even if doubtful in fact).'" *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While heightened fact pleading is not required, "enough facts to state a claim to relief that is plausible on its face" must be alleged. *Twombly*, 550 U.S. at 570. A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, --- U.S. ----, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). At bottom, "[t]he complaint must state enough facts to raise a reasonable expectation that discovery will reveal evidence of [each] necessary element" of a plaintiff's claim. *Wilkerson v. New Media Tech. Charter Sch. Inc.*, 522 F.3d 315, 321 (3d Cir. 2008) (internal quotation marks omitted). "[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court." *Twombly*, 550 U.S. at 558 (internal quotation marks omitted). Nor is the Court obligated to accept as true "bald assertions," *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997) (internal

quotation marks omitted), "unsupported conclusions and unwarranted inferences," *Schuylkill Energy Res., Inc. v. Pennsylvania Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997), or allegations that are "self-evidently false," *Nami v. Fauver*, 82 F.3d 63, 69 (3d Cir. 1996).

III. DISCUSSION[1]

A. Personal Jurisdiction

As the Plaintiff, Marnavi bears the burden of adducing facts which, at a minimum, "establish with reasonable particularity" that personal jurisdiction exists over the Keehans. *See Provident Nat'l Bank*, 819 F.2d at 437. Marnavi asserts two bases for this Court having personal jurisdiction over the Keehans. First, Marnavi relies on Delaware's Director Consent Statute. Second, Marnavi relies on Delaware's long-arm statute. I conclude that Marnavi has made an adequate showing with respect to the requirements under both of these statutes to justify permitting it to take jurisdictional discovery from the Keehans.

1. Director Consent Statute

Delaware's Director Consent Statute, 10 Del. C. § 3114, provides a basis for exercising personal jurisdiction over a director of a Delaware corporation "for acts performed in his capacity as a director." *Ryan v. Gifford*, 935 A.2d 258, 269 (Del. Ch. 2007). The Keehans argue that Section 3114 is not applicable here for several reasons.

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[1]Other than allegations regarding jurisdiction, on which the Court must make factual findings based on the record the parties have created, *see Nesbit v. Gears Unlimited, Inc.*, 347 F.3d 72, 77 (3d Cir. 2003) (holding that with respect to jurisdiction Court need not view evidence in light most favorable to either party), and except where otherwise indicated, all factual statements recounted in this section are based on Plaintiff's complaint, which the Court must take as true at this point.

First, the Keehans argue that Marnavi has failed to state a claim for breach of fiduciary duty against the Keehans in their capacity as officers or directors of APS or APC Ltd. (D.I. 69 at 1; *see also Eurofins Pharma U.S. Holdings, Inc. v. BioAlliance Pharma SA*, 2009 WL 2992552, at *6 (D. Del. Sept. 18, 2009).) In this regard, the Keehans note that: "The only alleged acts in Delaware by anyone are the incorporation of APS in 1986, the formation of Advanced Polymer Coatings LLC ('APC LLC') as a wholly-owned entity of APS in 1997, and the conversion of APC LLC into a Delaware corporation, APC Ltd., in 2002." (D.I. 69 at 2) The Keehans conclude: "None of those acts were integral to any alleged wrongful scheme for which Marnavi can conceivably obtain relief." (*Id.* at 2) In short, the Keehans insist: "APC's formation in October 1997 has no connection to any alleged wrong." (D.I. 96 at 15)

However, taking the complaint's allegations as true, and drawing all reasonable inferences in Marnavi's favor – which the Court must do at this stage of the proceedings – the formation of APC (at least) was integral to Marnavi's claims. The complaint alleges: "[t]he dispute began in 1997 when Marnavi arranged for APS to apply special coatings to the inner hull of a ship called the M/T Joran (the 'Joran'). APS botched the job and spent the next nine years fraudulently attempting to limit its liability and financial responsibility for the damage caused to the vessel." (D.I. 1 ¶ 1) In particular, "on or about July 28, 1997, Marnavi, acting on behalf of Jilmar, and APS [and other Defendants] entered into an agreement . . . providing that APS [and other Defendants] would supply and supervise the application of Siloxirane to the Joran's cargo tanks." (*Id.* ¶ 51) Then: "On October 20, 1997, less than three months after APS commenced the botched work on the Joran, the Keehans formed APC LLC, a Delaware limited liability company." (*Id.* ¶ 86) (emphasis added) The complaint can be read as alleging that the Keehans

had knowledge of the "botched" job almost immediately in 1997, by the time they formed APC in late October 2007, and, certainly, well before a 2001 arbitration decision against them. (D.I. 85 at 19-21; *see also* D.I. 1 ¶ 59 (alleging Defendants had knowledge of botched job before September 1998).) This is not a frivolous or implausible allegation.[2]

Next, the Keehans insist that Marnavi's derivative claim for waste "faces an insuperable legal barrier. APS, the nominal defendant on whose behalf the derivative claim is brought, lacks capacity to sue or be sued." (D.I. 69 at 9) The Keehans assert that APS was "dissolved" by March 1, 2004 – when its charter was voided by the Delaware Secretary of State due to non-payment of franchise taxes – and that Delaware law permits a suit against APS to proceed only if it was pending or filed within three years of that dissolution. (*See* D.I. 69 at 9-11 (citing 8 Del. C. § 278).) Marnavi responds by contending that the instant action – including count IV, for waste – is "effectively a continuation of the arbitration proceeding commenced in 2001, based on the same nucleus of facts, due to the Keehans' ongoing evasion of their obligations to Marnavi. The London arbitration award was issued in November 2005, well within the three year window permitted by 8 *Del. C.* § 278." (D.I. 85 at 3) Further, according to Marnavi, because the arbitration "award has yet to be satisfied . . . APS' corporate existence is automatically extended

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[2]It should be noted that another portion of the complaint appears to allege that the defendants' efforts to use corporate forms to evade liability for the "botched" coating job on the Jilmar only began after the arbitration proceedings had started in 2000. Paragraph 4 of the complaint alleges: "After the Owners [Jilmar and Marnavi] commenced arbitration proceedings in December 2000 in London, England, seeking compensation for damages to the M/T Joran, the Defendants began a shell game in an attempt to insulate their assets from their many creditors, including the Owners." (D.I. 1 ¶ 4) (emphasis added) However, taking the entirety of the factual allegations in the complaint as true, and drawing all reasonable inferences in Plaintiff's favor, I conclude that the complaint adequately alleges that the October 1997 formation of APC was part of the alleged scheme to avoid paying Marnavi.

by statute until full execution of any judgment is executed against it including the default judgment to be entered against it in this action." (D.I. 85 at 16) (citing *City Investing Co. Liquidating Trust v. Cont'l Cas., Co.*, 624 A.2d 1191, 1195 (Del. 1993)) In their reply brief, the Individual Defendants appear to agree that Section 278 permits litigation to proceed against a dissolved corporation more than three years following its dissolution if that litigation was "pending" within three years after the dissolution. (D.I. 96 at 9) The Keehans insist "this [instant] action is plainly a new suit filed against APS as a nominal defendant that purports to assert new claims of waste and breach of fiduciary duty against new parties (the Keehans) on behalf of APS on wholly new subject matters that were not at issue in the London arbitration." (*Id.* at 10) (emphasis added) To the contrary, at this stage of the proceedings – taking the Plaintiff's allegations as true – it would be premature to reach this conclusion.[3]

Finally, the Keehans argue that even if APS' existence is "revived," APS cannot maintain a suit against the Keehans, since "[t]he purported derivative claims of APS that Marnavi seeks to assert no longer belong to APS." (D.I. 96 at 13) However, the Ohio receivership proceedings by which these claims were transferred from APS are part of what the complaint is complaining about. (*See, e.g.*, D.I. 1 ¶¶ 96-103; *id.* ¶ 5 ("Less than six months after the Arbitrator issued his first interim award on the question of jurisdiction in July, 2002, APS entered into receivership proceedings in Ohio . . . ."); *id.* ¶ 166 ("The Keehan Companies' waste of assets included, but

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[3]Marnavi relies heavily on its insistence that it is "law of the case" that "APS has not been dissolved," that APS "is amenable to suit," and that APS, the Keehans, and the other defendants are "alter egos" of each other. (D.I. 85 at 1-2, 11-14) The Keehans respond with cases stating that the "law of the case" doctrine does not apply to default judgments. (D.I. 96 at 3-6 (citing, *e.g., United States v. Hatter*, 532 U.S. 557, 566 (2001)) Given my other conclusions, I do not find it necessary to resolve the parties' dispute on this point.

was not limited to, allowing control over technology to pass to related entities without adequate consideration . . . [and] the transfer of patents to other Keehan Companies to evade creditors . . . .").) The complaint alleges: "The entire Keehan Companies empire is built upon assets that belonged to APS that were deliberately stripped so as to deprive Plaintiff and others of their ability to be repaid." (*Id.* ¶ 117) Taking this allegation as true, the complaint may state a claim on which relief could be granted.

In sum, I am satisfied that, at minimum, "there is some indication that th[ese] particular defendant[s]," the Keehans, are "amenable to suit in this forum" pursuant to Delaware's Director Consent Statute. *LivePerson, Inc. v. NextCard, LLC*, 2009 WL 742617, at *6 (D. Del. Mar. 20, 2009). Marnavi's claims are not "clearly frivolous." *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003). Marnavi has met its burden to obtain jurisdictional discovery.

2. Long-Arm Statute

Delaware's long-arm statute, 10 Del. C. § 3104(c), provides in pertinent part:

> A Delaware court has personal jurisdiction over a non-resident defendant only when that non-resident defendant, either in person or through an agent:
>
> (1) Transacts any business or performs any character of work or service in the State; [or]
>
> . . .
>
> (3) Causes tortious injury in the State by an act or omission in this State . . . .

Delaware's courts have construed Delaware's long-arm statute "liberally so as to provide jurisdiction to the maximum extent possible. In fact, the only limit placed on § 3104 is that it remain within the constraints of the Due Process Clause." *Boone v. Oy Partek*, 724 A.2d 1150,

1157 (Del. Super. Ct. 1997) (internal citations omitted), *aff'd*, 707 A.2d 765 (Del. 1998) (table); *see also Hercules, Inc. v. Leu Trust and Banking (Bahamas) Ltd.*, 611 A.2d 476, 480 (Del. 1992). Subsections (c)(1) and (c)(3) confer "specific" jurisdiction over a non-resident defendant. *See, e.g., LaNuova D&B, S.p.A. v. Bowe Co., Inc.*, 513 A.2d 764, 768 (Del. 1986); *Jeffreys v. Exten*, 784 F. Supp. 146, 151 (D. Del. 1992). "Specific jurisdiction is at issue when the plaintiff's claims arise out of acts or omissions that take place in Delaware." *Boone*, 724 A.2d at 1155.

If a defendant is found to be within the reach of the long-arm statute, the court then must analyze whether the exercise of personal jurisdiction comports with due process. *See Intel*, 167 F. Supp. 2d at 700. The exercise of personal jurisdiction comports with due process where "the defendant's conduct is such that it should 'reasonably anticipate being haled into court there.'" *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); *see also Int'l Shoe*, 326 U.S. at 316.

Here, the Keehans list various activities which they do not do that would generally support personal jurisdiction under the Delaware Long Arm statute. "The Individual Defendants have never been to Delaware, transacted any business in Delaware, leased or owned property in Delaware, maintained bank accounts in Delaware or filed tax returns in Delaware. Nor have they derived income from Delaware or contracted to act as a surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within Delaware." (D.I. 69 at 2-3) In making these representations, the Keehans rely upon their own declarations, as well as that of their daughter, Denise Keehan. (D.I. 69-1; D.I. 69-2; D.I. 69-3)

However, as Marnavi explains, the complaint "alleges that APC was incorporated in Delaware as the first step in the Keehans[']] wrongful activities – knowing the failure of the re-

lining would lead to expensive liability – with the goal of transferring APS' assets out [of] reach and avoiding their obligations to Marnavi." (D.I. 85 at 19-20; *see also id.* at 21 ("Almost immediately upon realizing that APS' botched refitting of the Joran would result in significant liability for APS, the Keehans created a Delaware LLC to continue APS' business, registered the new company, APC, in Ohio under a different name, changed APC's name in Delaware, transferred APS' assets to the newly formed Delaware LLC and failed to pay APS' Delaware registration fees.")) While this allegation may be untrue, or it may be true but not provable, at this point I cannot say it is so "clearly frivolous" as to deprive Marnavi of even the opportunity to take jurisdictional discovery. *See generally Shamrock Holdings of California, Inc. v. Arenson,* 421 F. Supp. 2d 800, 804 (D. Del. 2006) ("A single act of incorporation in Delaware will suffice to confer personal jurisdiction over a nonresident defendant if such purposeful activity in Delaware is an integral component of the total transaction to which plaintiff's cause of action relates."); *Argos v. Orthotec LLC,* 304 F. Supp. 2d 591, 598 (D. Del. 2004) ("Given [a Delaware company's] choice for incorporation, the court finds that it voluntarily exposed itself to the possibility of litigation in Delaware . . . [and] cannot now attempt to shield itself from litigation in this forum by arguing that no conduct occurred in Delaware, that no injury was felt in Delaware, and that deposition and trial in Delaware would involve additional expense.").

3. Additional Basis for Discovery

Marnavi requests that, unless the Court is going to deny the Keehans' Motion, "the Court should permit Marnavi to take jurisdictional discovery to test the veracity of the affidavits" submitted by the Keehans and their daughter in support of the Motion to Dismiss. (D.I. 85 at 22) When a defendant presents a jurisdictional challenge, "courts are to assist the plaintiff by

allowing jurisdictional discovery unless the plaintiff's claim is clearly frivolous." *Toys "R" Us,* 318 F.3d at 456 (internal quotation marks omitted). "If a plaintiff presents factual allegations that suggest with reasonable particularity the possible existence of the requisite contacts between [the party] and the forum state, the plaintiff's right to conduct jurisdictional discovery should be sustained." *Id.* at 456 (internal quotation marks and citation omitted); *see also Renner v. Lanard Toys Ltd.,* 33 F.3d 277, 283 (3d Cir. 1994) (citing "[n]umerous cases [that] have sustained the right of plaintiffs to conduct discovery before the district court dismisses for lack of personal jurisdiction"). I will grant Marnavi the requested opportunity to take jurisdictional discovery.

The record before the Court, as has been recited above, contains sufficient non-frivolous allegations to support the request for jurisdictional discovery. Marnavi's request is particularly compelling given what occurred when the Court permitted jurisdictional discovery in connection with an earlier motion to dismiss, one filed by co-defendant APC. The Court held a hearing on APC's motion on April 27, 2009, at which APC's counsel represented to the Court that the Keehans were residents of Ohio. (D.I. 57 at 5-7, 21) During jurisdictional discovery it was subsequently determined that the Keehans were, instead, residents of Florida, and had been since 2007. (D.I. 54 at 2-3 n.5; D.I. 54-5) At the same hearing – and in APC's briefs filed prior to that hearing – APC insisted that it was a Delaware limited liability company, and predicated its motion to dismiss on a purported lack of complete diversity between Marnavi and each member of the Delaware limited liability company. (D.I. 58 at 5-6) Jurisdictional discovery thereafter revealed that APC had been converted to a Delaware corporation on November 26, 2002. (D.I. 58 at 6) Relatedly, shortly before the April 2009 hearing, APC's counsel, John Manos, formed a new company in Ohio called Ohio Advanced Polymer Coatings, Inc. ("Ohio APC") and later

authorized the merger of APC into Ohio APC. (D.I. 54 at 3; D.I. 54-8; D.I. 58 at 7 n.6) Based on all of this, Marnavi contends that "the jurisdictional discovery demonstrated that the shape-shifting of the Keehans' corporations continues." (D.I. 85 at 17-18) One need not accept Marnavi's broad conclusion in order to determine that it is appropriate, in any event, to permit Marnavi to take jurisdictional discovery to test the veracity of the declarations that have been provided by the Keehans.

B. Service of Process

The Keehans' challenge to the adequacy of service of process appears to be based entirely on cases that construe Delaware's Director Consent Statute, 10 Del. C. § 3114, to the effect that where a court lacks personal jurisdiction over a non-resident defendant, it follows that service of process on such a defendant by service on the corporation's registered agent is ineffective. *See* D.I. 69 at 7 (citing *Amaysing Technologies Corp. v. Cyberair Communications, Inc.*, 2005 WL 578972, at *8 (Del. Ch. Mar. 3, 2005)). Here, however, the Keehans have expressly waived their insufficiency of service defense. In a stipulation, which was subsequently "so ordered" by the Court, the Keehans "hereby agree to accept service of the Summons and Complaint by the mailing of the Summons and Complaint to Defendants' Primary Counsel, and the Keehans waive any and all objections and defenses to the validity of such service." (D.I. 33 at 2-3; D.I. 43 at 2-3) It is undisputed that Marnavi mailed the summons and complaint to the Keehans' "primary counsel" (Mr. Manos). (D.I. 44)

Nonetheless, given that I have ordered jurisdictional discovery, I will refrain from making any recommendation as to the disposition of the Keehans' Rule 12(b)(5) challenge until after receiving the supplemental briefing described below.

C. Failure to State a Claim

I have already explained, in connection with ordering jurisdictional discovery, how, taking the factual allegations of the complaint as true, and drawing all reasonable inferences therefrom in favor of Marnavi, Marnavi has stated a claim for relief that is not clearly frivolous. Given that I have ordered jurisdictional discovery, I will refrain from making any recommendation as to the disposition of the Keehans' Rule 12(b)(6) challenge until after receiving the supplemental briefing described below.

IV. CONCLUSION

IT IS HEREBY ORDERED THAT:

1. Jurisdictional discovery shall be commenced in time to be completed **by June 1, 2010**.

a. Plaintiff may serve on Donald J. Keehan and Arlene Keehan a total of ten (10) interrogatories each, limited to issues concerning jurisdictional discovery.

b. Plaintiff may serve on Donald J. Keehan and Arlene Keehan a total of ten (10) document requests each, limited to issues concerning jurisdictional discovery.

c. Plaintiff may serve on Donald J. Keehan and Arlene Keehan a total of twenty (20) requests for admission each, limited to issues concerning jurisdictional discovery.

d. Plaintiff may serve a deposition notice on Donald J. Keehan, Arlene Keehan, and Denise Keehan. Such notice will include particular topics limited to jurisdictional discovery. Such depositions shall occur at a mutually agreed-upon location.

e. All jurisdictional discovery provided for by this Order is in addition to

discovery on the merits to which the parties are already entitled.

2. Supplemental briefing on personal jurisdiction shall be provided according to the following schedule:

a. Simultaneous opening letter briefs (5 page limit each) **on June 7, 2010;**

b. Simultaneous responsive letter briefs (3 page limit each) **on June 14, 2010**.

3. Oral argument on the Individual Defendants' Motion, previously scheduled for April 22, 2010 at 3:00 p.m., is hereby **CANCELLED**.

Dated: April 14, 2010

Honorable Leonard P. Stark
UNITED STATES MAGISTRATE JUDGE