UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 15-cv-62359-BLOOM/Valle

JAMES JOHN WAITE, JR. *and*
SANDRA WAITE,

Plaintiffs,

v.

AII ACQUISITION CORP., *et al.*,

Defendants.
_____/

ORDER

THIS CAUSE is before the Court upon two Motions filed by Defendant Union Carbide Corporation ("Defendant" or "Union Carbide"): its Motion for Reconsideration, ECF No. [63] ("Motion for Reconsideration" or "Motion") and its Motion for Leave to File Amended Answer and Affirmative Defenses, ECF No. [67] ("Motion for Leave"). Additionally, all Defendants named in the above-styled case have filed a third Motion for an Extension of Time to Amend Answers and Affirmative Defenses, ECF No. [66] ("Motion for Extension of Time to Amend" or "Motion to Amend"), which the Court will address here as well. The Court has reviewed the Motions, the supporting and opposing submissions, the record in this case, and is otherwise fully advised as to the premises. For the reasons set forth below, the Motion for Reconsideration is granted in part and denied in part. The Motion for Leave to File Amended Answer and Affirmative Defenses and Motion for Extension of Time to Amend are granted.

I. Background[1]

Plaintiffs James John Waite, Jr., and Sandra Waite ("Plaintiffs") brought this action against Defendant asbestos manufacturers ("Defendants")[2], including Union Carbide, for injuries sustained from exposure to "asbestos dust" from products that were "mined, processed, supplied, manufactured, and distributed" by Defendants or their predecessors. Compl. ¶¶ 9, 10. Defendant "manufactures or manufactured" products that contained "substantial amounts of asbestos" ("Asbestos Products"), including, among others, "asbestos insulation and cements, friction materials, asbestos containing automobiles and braking systems, gasket materials, clutch facings, drywall joint compound and highly refined asbestos fiber." *Id*. ¶¶ 5, 12. Plaintiff James Waite, and those working with and around him, used Defendants' Asbestos Products, beginning in the 1940s, and through the 1970s, "in the intended manner and without significant change in the Asbestos Product's condition. Plaintiff relied upon the Defendants to instruct him and those working around him regarding the proper methods of handling the products, being unaware of the dangerous properties of asbestos." *Id*. ¶¶ 11, 12. "Plaintiff's exposure to and inhalation of asbestos from Defendants' Asbestos Products caused him to contract an asbestos-related disease, specifically malignant mesothelioma." *Id*. ¶ 13. The Complaint seeks compensatory damages for three claims against Defendants: Negligence (Count I); Strict Liability (Count II); and Failure to Use Reasonable Care (Count III).

Plaintiffs filed their Complaint, ECF No. [1-2] at 13-34 ("Complaint"), on November 6, 2015. Defendant filed its Motion to Dismiss for lack of personal jurisdiction, ECF No. [23] ("Motion to Dismiss"), on November 25, 2015. The Motion to Dismiss became ripe for

[1] These facts are substantially similar to those set forth in the Court's Order Denying Defendant's Motion to Dismiss. They are repeated here for ease of reference.

[2] Defendants in this action include: AII Acquisition Corp; Borg-Warner Corporation; Ford Motor Company; Genuine Parts Company; Georgia-Pacific LLC; Honeywell International, Inc.; Pneumo Abex LLC; Union Carbide; and Western Auto Supply Company.

adjudication on December 24, 2015. On December 28, 2015, the Court entered its memorandum opinion and order denying Union Carbide's Motion to Dismiss. ECF No. [50] (the "Order"); *Waite v. AII Acquisition Corp.*, 2015 WL 9595222 (S.D. Fla. Dec. 29, 2015). The instant Motion for Reconsideration followed, less than twenty-eight days from issuance of the Order, pursuant to the Federal Rule of Civil Procedure 59(b). Plaintiffs responded to Defendant's Motion for Reconsideration on February 8, 2016, ECF No. [70] ("Response"), to which Defendant replied on February 19, 2016, ECF No. [73] ("Reply"). On February 1, 2016, Defendants filed their Motion for Extension of Time to Amend, and Union Carbide filed its Motion for Leave to File an Amended Answer and Affirmative Defenses.

II. Legal Standard

A. Reconsideration

Defendant seeks reconsideration of the Order pursuant to Fed. R. Civ. P. 59(e). "While Rule 59(e) does not set forth any specific criteria, the courts have delineated three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Williams v. Cruise Ships Catering & Serv. Int'l, N.V.*, 320 F. Supp. 2d 1347, 1357-58 (S.D. Fla. 2004) (citing *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994)); *see Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002) ("[T]here are three major grounds which justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice.").

"[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly in the interests of finality and conservation of scarce judicial resources." *Wendy's*

Int'l, Inc. v. Nu-Cape Const., Inc., 169 F.R.D. 680, 685 (M.D. Fla. 1996); *see also Campero USA Corp. v. ADS Foodservice, LLC*, 916 F. Supp. 2d 1284, 1290 (S.D. Fla. 2012). "Motions for reconsideration are appropriate where, for example, the Court has patently misunderstood a party." *Compania de Elaborados de Cafe v. Cardinal Capital Mgmt., Inc.*, 401 F. Supp. 2d 1270, 1283 (S.D. Fla. 2003); *see Eveillard v. Nationstar Mortgage LLC*, 2015 WL 1191170, at *6 (S.D. Fla. Mar. 16, 2015). But, "[a] motion for reconsideration should not be used as a vehicle to present authorities available at the time of the first decision or to reiterate arguments previously made." *Z.K. Marine Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992). "[T]he movant must do more than simply restate his or her previous arguments, and any arguments the movant failed to raise in the earlier motion will be deemed waived." *Compania*, 401 F. Supp. 2d at 1283. Simply put, a party "cannot use a Rule 59(e) motion to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." *Michael Linet, Inc. v. Vill. of Wellington, Fla.*, 408 F.3d 757, 763 (11th Cir. 2005).

B. Amendment of Pleadings

Apart from initial amendments permissible as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.* The Court notes that, here, Defendants filed their Motions before the deadline to amend set by the Court. However, "[a] district court need not . . . allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001). The law in this Circuit is clear that "a district court may properly deny leave to

amend the complaint under Rule 15(a) when such amendment would be futile." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004); *see also Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1292 n. 6 (11th Cir. 2007) (same); *Thompson v. City of Miami Beach, Fla.*, 990 F. Supp. 2d 1335, 1343 (S.D. Fla. 2014) ("[A] district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile.") (citation omitted). Any requests for leave to amend after the applicable deadline, as set in a scheduling order, require a showing of "good cause." Fed. R. Civ. P. 16(b)(4). "To establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party's diligence." *Ashmore v. Sec'y, Dep't of Transp.*, 503 F. App'x 683, 685-86 (11th Cir. 2013).

Through these lenses, the Court addresses the instant Motions in turn.

III. Discussion

A. Motion for Reconsideration

The recent Supreme Court decision of *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014), governs this matter. In the Motion for Reconsideration, Defendant makes four principal arguments: (1) the Court misunderstood Union Carbide's *Daimler* argument[3] and failed to apply

[3] Union Carbide argues that the Court misunderstood Defendant's argument by framing it as proposing that *Daimler* "*ipso facto* precludes jurisdiction over a company whose state of incorporation and principal place of business are elsewhere, regardless of the company's activities in Florida." Order at 14. Defendant contends that, to the contrary, it expressly acknowledged that *Daimler* left open the "possibility" that "a corporation's operations in a forum other than its formal place of incorporation or principal place of business" could "be so substantial and of such a nature as to render the corporation at home in that State." Motion to Dismiss at 6. The Court recognizes that portions of the Court's Order summarizing Defendant's argument in the Motion to Dismiss appear exaggerated, standing alone. It is true that in the Motion to Dismiss, Defendant acknowledged that there could exist an exceptional case in which a nonresident company could be subject to general jurisdiction under *Daimler*. Motion at 2 (quoting Daimler at 760) ("*Daimler* held that, *ordinarily*, a corporation will be deemed 'at home,' and subject to general jurisdiction, only in the state or states of its 'place of incorporation and principal place of business.'") (emphasis added). However, it did not explain to the Court why this case did not fall into that exception – instead, merely representing that the fact that Florida is neither Union Carbide's state of incorporation nor its principle place of business is dispositive. Here is one example: "In fact, Plaintiffs

the Eleventh Circuit's controlling decisions in *Carmouche* and *Schulman*; (2) the Court erroneously utilized specific jurisdiction principles to determine whether the exercise of general jurisdiction would comport with due process; (3) the Court "manifestly misapplied" *Daimler*; and (4) the Court clearly erred in focusing on allegations of decades-old conduct to determine general jurisdiction.[4] *See* Motion at 1-2. The Motion further maintains that Plaintiffs' evidence fails to demonstrate that Union Carbide is subject to specific jurisdiction in Florida in this action.

The Court agrees that reconsideration of its Order on Defendant's Motion to Dismiss is warranted to correct clear error. *See, e.g.*, *Bell v. Florida Highway Patrol*, 589 F. App'x 473, 474 (11th Cir. Dec. 11, 2014) (citing *Schuurman v. Motor Vessel Betty KV*, 798 F.2d 442, 445 (11th Cir. 1986) (affirming district court decision granting defendant's motion for reconsideration where court committed error in failing to analyze *Schurrman* in rendering its original decision). Despite Defendant's assertions to the contrary, the Order cites, and even quotes, the Eleventh Circuit in *Carmouche* – not once, but twice.[5] *See* Order at 3-4, 6; *Waite*, 2015 WL 9595222, at *2 (quoting *Carmouche v. Carnival Corp.*, 36 F. Supp. 3d 1335, 1388 (S.D. Fla. 2014), *aff'd by Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1204 (11th Cir. 2015)) ("Once the plaintiff pleads sufficient material facts to form a basis for in personam jurisdiction, the burden shifts to the defendant to challenge plaintiff's allegations by affidavits or other pleadings."); *id.* at *3 (citing *Tarasewicz v. Royal Caribbean Cruises Ltd.*, 2015 WL 3970546, at *20 (S.D. Fla. June 30, 2015) (quoting *Carmouche*, 36 F. Supp. 3d at 1341) ("While

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plead (correctly) that Union Carbide is incorporated in New York and (incorrectly) that its principal place of business is New York, which alone should end the inquiry under *Daimler*." As discussed below, this is certainly *not* where the case law, including *Daimler*, *Carmouche*, or *Schulman*, dictates that the relevant inquiry should end.

[4] Alternatively, Defendant requests that the Court certify the Order for immediate review pursuant to 28 U.S.C. § 1292(b).

[5] Although the Court cited the District Court decision in *Carmouche*, rather than the Circuit Court affirmance, the Circuit opinion affirmed all parts of the District Court opinion.

Florida's specific jurisdiction requires the plaintiff to establish connexity between the injuries suffered and the defendant's contacts, Florida's general jurisdiction does not.")). However, despite these references, the Court failed to correctly apply therein the standard articulated by the Eleventh Circuit in *Carmouche*, as restated in *Schulman*. As clarified by the subsequent analysis, proper application of Eleventh Circuit case law counsels against finding that Union Carbide is subject to general jurisdiction in Florida. Nevertheless, specific jurisdiction over Union Carbide in the Southern District of Florida exists under these facts.

1. General Jurisdiction[6]

The Supreme Court has explained the general jurisdiction analysis as follows: "[T]he proper inquiry, this Court has explained, is whether a foreign corporation's 'affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State.'" *Daimler*, 134 S. Ct. at 749 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011)) (quotation marks omitted). The Eleventh Circuit has restated this test as follows: "A foreign corporation cannot be subject to general jurisdiction in a forum unless the corporation's activities in the forum closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business." *Carmouche*, 789 F.3d at 1205; *see also Schulman*, 624 F. App'x at 1005 ("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations, without offending due process when their affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State.") (quotation marks omitted) (quoting *Goodyear*, 131 S. Ct. at 2851; *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945).

[6] For a full recitation of the standard on general jurisdiction, *see Waite v. AII Acquisition Corp.*, 2015 WL 9595222, at *3 (Dec. 29, 2015). The Court states only the law relevant to the instant granting of reconsideration.

Thus, although *Daimler* did not overrule the contacts-based doctrine of *Int'l Shoe*, it significantly narrowed it: "[T]he inquiry under *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,' it is whether that corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" *Daimler*, 134 S. Ct. at 761 (quoting *Goodyear*, 131 S. Ct. at 2851); *see, e.g.*, *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 448 (1952) (finding general jurisdiction where the defendant had established a temporary management office in the subject forum during wartime). Thus, a nonresident corporation will be subject to general jurisdiction only in the "exceptional case."

Of course, the relevant determination is inherently fact-intensive. Accordingly, in the original Order, the Court analyzed the facts presented as they compare to those in *Daimler*:

> *Daimler* involved claims brought in the United States against a German corporation (Daimler) by Argentinian citizens for wrongs committed by an Argentinian subsidiary of Daimler in Argentina. At no point in the case were there any tortious acts conducted, connected to, directed at, or effected in the United States, let alone in [the home state]. Under those facts, the Supreme Court found that general jurisdiction was improper. In stark contrast, Plaintiffs' actions here involve Florida citizens, whose injuries developed and were diagnosed and treated in Florida as a result of exposure to Defendant's asbestos products. . . . Moreover, Waite's exposure to Defendant's asbestos in Massachusetts occurred when Defendant was systematically and continuously importing the exact same product into Florida.

Order at 16. Thus, the Supreme Court based its reversal of the Ninth Circuit's finding of general jurisdiction on facts that paint a far more attenuated picture of a defendant's connection to the home forum as compared to those present in the instant dispute, to wit: the insignificance of the "observation that MBUSA's [an American subsidiary of Daimler] services were 'important' to Daimler, as gauged by Daimler's hypothetical readiness to perform those services itself if MBUSA did not exist"; the fact that the suit was brought by "foreign plaintiffs having

nothing to do with anything that occurred or had its principal impact in California"; and the "risks to international comity posed by its expansive view of general jurisdiction." *Id.* at 749-50.

Similarly, in *Barriere v. Juluca*, 2014 WL 652831, at *9 (S.D. Fla. Feb. 19, 2014), the Court found that the defendant, Cap Juluca, was subject to general jurisdiction in this district. In that case, the plaintiffs, citizens of Texas, sued Cap Juluca, an Anguillan corporation that managed a property in Anguilla, for a slip-and-fall injury that occurred at the defendant's resort in Anguilla. *Id.*, at *5. Cap Juluca, an Anguillan corporation with its principal place of business in Anguilla, maintained a sales office in Florida. *Id.*, at *8. Additionally, its assets were managed by a Florida-based agent, Leading Hotels of the World, another defendant in the lawsuit. *Id.* The Court held that this was sufficient to conclude that Leading Hotels of the World maintained control over Cap Juluca. *Id.* Accordingly, *Barriere* found that Cap Juluca had such minimum contacts with Florida to be considered "at home." *Id.*, at *6 (citing *Goodyear*, 131 S. Ct. at 2853-54) ("The 'paradigm forum for the exercise of general jurisdiction . . . is one in which the corporation is fairly regarded as at home.'"). As the Court explained, "[a] contrary result would effectively permit foreign corporations to freely solicit and accept business from Americans in the United States and at the same time be completely shielded from any liability in U.S. courts from any injury that may arise as a result." *Id.*, at *8. Furthermore, "[b]oth Florida and the interstate judicial system have an interest in adjudicating disputes arising from injuries which occur at or as a result of these resorts particularly when the injured are flown to Florida for medical treatment as a result." *Id.*

However, what this Court failed to originally recognize is that *Barriere* was decided without the benefit of the Eleventh Circuit's interpretation of *Daimler* in the *Carmouche* and

Schulman decisions, which were entered subsequently. As this Court initially did not analyze these Eleventh Circuit opinions in detail, it does so now.

Carmouche involved a negligence action by a passenger on a cruise, run by Carnival Corporation, who was injured during a shore excursion operated by defendant Tamborlee in Belize. 789 F.3d at 1202. Tamborlee sought to dismiss Carmouche's complaint for lack of personal jurisdiction, which the district court granted, after allowing leave for plaintiff to take jurisdictional discovery. *Id.* Tamborlee, a corporation registered in Panama that provided shore excursions for tourists in Belize, never operated a shore excursion in Florida, never advertised to potential customers in Florida, nor was it incorporated or licensed to do business in Florida. *Id.* at 1202-03. Tamborlee's connections with Florida included insurance policies with several Florida companies, a bank account with Citibank that was handled by a department in Miami, and membership in the Florida Caribbean Cruise Association, a non-profit trade organization. *Id.* at 1203. Moreover, Tamborlee entered into an agreement with Carnival to provide shore excursions for Carnival passengers in Belize, which included a forum selection clause providing for the Southern District of Florida. *Id.* Additionally, the contract listed a post-office box in Key West, Florida, as Tamborlee's "principal place of business." *Id.* Also in 2005, Tamborlee filed a UCC financing statement with the Florida Secretary of State, which listed a different Key West address.[7] *Id.* The Eleventh Circuit concluded that these connections were not "so substantial" as to make this one of the "'exceptional' cases in which a foreign corporation is 'at home' in a forum other than its place of incorporation or principal place of business." *Id.* at 1204 (quoting *Daimler*, 134 S. Ct. at 761 n. 19).

[7] Tamborlee argued that the inclusion of these Key West addresses was "entirely in error." *Id.* Nevertheless, the Court instructed that this address was not dispositive in its general jurisdiction analysis. *Id.*

Following *Carmouche*, in *Schulman v. Institute For Shipboard Educ.*, 624 F. App'x 1002, 1005 (11th Cir. Aug. 18, 2015), the plaintiff was killed during a snorkeling excursion near the island of Dominica when the captain of a catamaran started the boat's engines while Schulman was swimming nearby. *Id.* at 1004. As a result, the personal representative of Schulman's estate filed a complaint of strict liability and negligence against the manufacturer of the catamaran, Fountaine-Pajot, in the Southern District of Florida. Fountaine-Pajot moved to dismiss the complaint for lack of personal jurisdiction. *Id.* The district court, after providing plaintiff with leave to take jurisdictional discovery, granted Fountaine-Pajot's motion to dismiss. *Id.* The plaintiff appealed the decision to the Eleventh Circuit. *Id.*

According to *Schulman*, Fountaine-Pajot, a French corporation that manufactured and sold catamaran vessels in France, had distribution arrangements with distributors based in Florida and elsewhere in the United States; however, these distributors were independent businesses that purchased their vessels in France and marketed vessels made by other manufacturers as well. *Id.* Although approximately 12% of Fountaine-Pajot's sales between 2008 and 2014 were to distributors based in the United States, Fountaine-Pajot had no offices or employees in the United States. *Id.* Fountaine-Pajot marketed its vessels in magazines circulated in the United States, including the Florida-based magazines, South Winds and Florida Mariner, and Fountaine-Pajot's representatives attended boat shows in the United States, including the Miami International Boat Show. *Id.* The only other connection with the United States was an agreement between Fountaine-Pajot and CGI Financing, Inc., a Maryland-based financing company, to help dealers and buyers in the United States finance purchases of their vessels. *Id.*

Comparing the facts in *Schulman* to those in *Daimler*, the Circuit Court then reasoned that Fountaine-Pajot's few connections with Florida failed to satisfy the heightened standard for general jurisdiction: "Fountaine-Pajot has no subsidiaries based in Florida. And Fountaine-Pajot's marketing efforts and attendance at a Florida trade show, even when coupled with its sales to Florida dealers, do not render it essentially at home, in Florida." *Id.* at 1005 (citing *Fraser v. Smith*, 594 F.3d 842, 844-46 (11th Cir. 2010) (holding that Florida courts could not exercise general personal jurisdiction over foreign company even though the company engaged in marketing activities in Florida, procured liability insurance through a Florida insurance agent, purchased about half of its boats in Florida, and sent employees and representatives to Florida for training)).

Through this landscape, the Court considers the facts in the present case. According to Plaintiffs' evidence, Defendant has been registered to do business in Florida and maintained a registered agent to receive service of process in Florida since 1949. *See, e.g.*, ECF No. [38]. Throughout the 1960s, 1970s, and 1980s, it is clear from the evidence presented that Union Carbide maintained a substantial presence in Florida, actively targeting the state in its sales and marketing, as well as building, owning, and operating a plant and shipping terminal in different parts of the state. *See* Order Denying Motion to Dismiss (examining these contacts in more detail). More recently, Union Carbide has been a defendant in numerous cases litigated in Florida, including asbestos cases involving exposures to its "Calidria" brand asbestos, as implicated here. *See, e.g.*, *Union Carbide Corp. v. Kavanaugh*, 879 So.2d 42 (Fla. 4th Dist. Ct. App. 2004); *McConnell v. Union Carbide Corp.*, 937 So.2d 148 (Fla. 4th Dist. Ct. App. 2006). Ironically, Union Carbide has also filed cases in Florida as a plaintiff. *See, e.g.*, ECF No. [38-13] *Union Carbide v. Florida Power and Light Company, et al.*, Case No. 88-cv-1622, 1993 U.S.

Dist. LEXIS 21203 (M.D. Fla. Dec. 8, 1993) (Union Carbide brought antitrust action against Florida power companies alleging violation of federal and Florida state antitrust laws).

Defendant contends that its older contacts with the state are not proper to consider in the instant determination. *See U.S. v. Subklew*, 2001 WL 896473, at *3 (S.D. Fla. June 5, 2001) (holding that courts considering general jurisdiction should examine a defendant's contacts with the forum state over a reasonable period of time prior to filing suit; rejecting a 13-year lookback period in that case) (citing authorities). Although there is merit to this argument, its resolution either way will not impact the Court's analysis.

The Eleventh Circuit has made clear that sales and marketing efforts, even together with holdings and operations in Florida, are insufficient to render a nonresident company at home in Florida. Likewise, Union Carbide's invocation of Florida law and its maintenance of a registered agent in Florida are not activities that closely approximate those ordinarily characterizing a corporation's place of incorporation or principal place of business. *See, e.g., Virgin Health Corp. v. Virgin Enterprises Ltd.*, 393 F. App'x 623, 626 (11th Cir. 2010) ("Nor does general jurisdiction apply to [defendant] because it filed an infringement suit in the Southern District of Florida in 2006."). Certainly, Plaintiffs have presented no evidence suggesting that Union Carbide has any subsidiaries based in Florida – and, even if they had, that fact alone would not suffice for the exercise of general jurisdiction. *See, e.g., Daimler*; *Schulman*. Ultimately, the evidence presented does not persuade the Court that Union Carbide's contacts with Florida are of such a magnitude or nature as to constructively render it at home here.[8] For that reason, Defendant is not subject to general jurisdiction in this district.

[8] The Court refrains from analyzing reasonableness factors in the context of general jurisdiction, pursuant to the Supreme Court's instructions that they are to be "essayed" only "when specific jurisdiction is at issue." *Daimler*, 134 S. Ct. at 762 n. 20.

2. Specific Jurisdiction

Nonetheless, Defendant is clearly subject to specific jurisdiction pursuant to Florida's long-arm statute. "Since the extent of the long-arm statute is governed by Florida law, federal courts are required to construe it as would the Florida Supreme Court." *Id.* (quoting *Cable/Home Communication v. Network Prods.*, 902 F.2d 829, 856 (11th Cir. 1990)). Furthermore, "[a]bsent some indication that the Florida Supreme Court would hold otherwise, [federal courts] are bound to adhere to decisions of [Florida's] intermediate courts." *Id.* (citation omitted).

a. Florida's Long-Arm Statute

Specific jurisdiction exists where the non-resident defendant engages in specific actions enumerated in Fla. Stat. § 48.193(1), which give rise to the stated cause of action. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 411 n. 8 (1984) ("It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising 'specific jurisdiction' over the defendant."). This list of actions includes, in relevant part, "causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either [the] defendant was engaged in solicitation or service activities within this state [or p]roduces, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use." Fla. Stat. § 48.193(1)(a)(6); *see Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir. 2008) ("[T]he Florida long-arm statute permits jurisdiction over the nonresident defendant who commits a tort outside of the state that causes injury inside the state."); *see also Posner v. Essex Ins. Co.*, 178 F.3d 1209, 1216 (11th Cir. 1999) (adopting broad interpretation of long-arm statute by Florida courts that permits personal jurisdiction over

nonresident defendant alleged to have committed a tort causing injury in Florida). "Florida's specific jurisdiction requires the plaintiff to establish connexity between the injuries suffered and the defendant's contacts." *Tarasewicz v. Royal Caribbean Cruises Ltd.*, 2015 WL 3970546, at *20 (S.D. Fla. June 30, 2015) (quoting *Carmouche*, 36 F. Supp. 3d at 1341).

"It is axiomatic that a cause of action for negligence, or products liability, or breach of warranty does not accrue until the complaining party sustains some type of damage. A cause of action sounding in tort arises in the jurisdiction where the last act necessary to establish liability occurred. In Florida, the 'last act' is *discovery of the damage*." *Wildenberg v. Eagle-Picher Industries*, 645 F. Supp. 29, 30 (S.D. Fla. 1986) (citing *Colhoun v. Greyhound Lines, Inc.*, 265 So. 2d 18 (Fla. 1972)) (emphasis added); *see also F.D.I.C. v. Stahl*, 89 F.3d 1510, 1522 (11th Cir. 1996) ("Florida courts have found that the limitations period does not begin to run until a plaintiff knew or should have known of the injury."). In other words, as codified by the Florida Asbestos and Silica Compensation Fairness Act, Fla. Stat. § 774.206(1) (2010) (the "Act"), the relevant date of injury is when "the exposed person discovers, or through the exercise of reasonable diligence should have discovered, that he or she is physically impaired by an asbestos-related . . . condition." *Id.*; *see American Optical Corp. v. Spiewak*, 73 So. 3d 120, 126 (Fla. 2011) (quoting *Celotex Corp. v. Copeland*, 471 So. 2d 533, 539 (Fla. 1985)) ("With regard to asbestos-related diseases, we have held that an action accrues when the accumulated effects of the substance manifest in a way which supplies some evidence of the causal relationship to the manufactured product.").

Union Carbide attempts to manufacture a distinction between injury to a party and accrual of an action – however, in this case, it is a distinction without a difference. *See, e.g.*, Reply at 8. An injury does not exist before its discovery. Here, according to the Act, the injury

did not occur until Waite knew or should have reasonably known that he was physically impaired by a condition related to asbestos exposure.

Nevertheless, courts have demonstrated some confusion in applying the definition of injury supplied by the Act. For example, in *American Optical*, 73 So. 3d at 129, faced with similar facts, the court held that the inhalation of the asbestos fibers constituted the actual injury that was "inflicted upon the bodies of the plaintiffs." However, in *Frazier v. Philip Morris USA Inc.*, 89 So. 3d 937, 945 (3rd DCA April 11, 2012), the court interpreted *American Optical* to mean that, in the case of a "creeping disease," like mesothelioma, "the 'manifestations' that are pertinent are symptoms or effects that actually disclose that the prospective claimant is suffering from a disease or medical condition caused by tobacco use, and which are thus sufficient to assert a cause of action against the responsible manufacturer(s)." Furthmore, the Court rejected "as both unworkable and unfair an interpretation of the 'creeping disease' case law that would allow a defense expert to engage in a belated armchair analysis and to opine many years later that the claimant's claim is barred because her treating physician should have investigated the creeping, as yet un-manifested disease." *Id.* at 946.

Examining the context of these two cases resolves any apparent conflict between their holdings. In *American Optical*, 73 So. 3d at 126-27, the Court was focused on dispelling the notion that manifestation, as defined by the Act, was limited to "physical impairment symptons as set forth in the statutory restrictions." *Frazier*, 89 So. 3d 937, elucidated the previously-unwritten corollary: although certain physical symptoms are not required for manifestation of an illness, likewise, no manifestation occurs unless or until an exposed person can reasonably discover a physical impairment. As the Court in *Frazier* illustrated, otherwise, "Frazier could not have filed a non-frivolous lawsuit against the appellees in 1986 on a theory that her

symptoms and pneumonia were compensable results of her addiction to tobacco, nor could she have filed such a lawsuit in 1987 for 'pneumonia and/or bronchitis.' It was not until February 1991 that a set of tests and a referral adduced competent evidence that COPD/emphysema was a likely suspect." *Id.* at 946. This reading of the Act is consistent with its purpose of "preserv[ing] the rights of any individuals who have been exposed to asbestos to pursue compensation should they become 'impaired' in the future." Fla. Stat. § 774.202 (2010);[9] *see also Berger v. Philip Morris USA, Inc.*, 49 F. Supp. 3d 1065, 1070, 1074 (M.D. Fla. 2014) ("[I]n the creeping disease context, knowledge of a causal connection is warranted as a means to prevent the perverse result of plaintiffs being unable to pursue fruitful actions before ever knowing enough to do so. . . . 'Manifested' in this sense is that point in time when [plaintiff's disease] became symptomatic.").

Here, Waite could not have filed a lawsuit against Union Carbide around the time of his asbestos exposure, in the mid-1900s, in Massachusetts, as he only learned of his injury at a much later date – when he began exhibiting symptoms that led to his diagnosis with malignant mesothelioma on June 25, 2015. Assessing a precise date is unnecessary, as Plaintiff has lived in Florida since the late 1970s. Plaintiff asserts that he had no knowledge of an injury – nor could he have reasonably discovered one – before moving to Florida. Defendant has failed to submit any evidence to the contrary. Accordingly, despite the fact that Waite was exposed to Union Carbide's Asbestos Products in Massachusetts, the manifestation of his injury occurred in Florida.

[9] Section 774.202 provides that the Act serves four purposes in total: (1) to give priority to "true" victims of asbestos (i.e., those claimants who can demonstrate "actual physical impairment" caused by asbestos exposure); (2) to preserve the rights of any individuals who have been exposed to asbestos to pursue compensation should they become "impaired" in the future; (3) to enhance the ability of the judicial system to supervise and control asbestos litigation; and (4) to conserve the resources of defendants to permit compensation to cancer victims and individuals who are currently "physically impaired," while securing the right to similar compensation to individuals who may suffer "physical impairment" in the future. Fla. Stat. § 774.202 (2010).

Furthermore, as required by the long-arm statute, Plaintiffs' evidence shows that Defendant was selling the exact same Asbestos Products in Florida for use in joint compound products (among others) at the time that Waite was using those products in Massachusetts. *See* Fla. Stat. § 48.193(1)(a)(6) (". . . if, at or about the time of the injury, either [the] defendant was engaged in solicitation or service activities within this state [or p]roduces, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use."). Plaintiffs have demonstrated that Defendant has been registered to do business in Florida and has maintained a registered agent to receive service of process since 1949. *See* ECF No. [38]. By the early 1970s, Defendant was the largest supplier of asbestos to the drywall joint compound market in the United States, supplying over 50% of all asbestos fiber used in joint compounds. *Id.* Plaintiffs have even produced invoices demonstrating that Union Carbide sold tons of Calidria to customers in Florida, as well as a plant in Jacksonville, in the 1960s and 1970s. *Id.*; *see Aubin v. Union Carbide Corp.*, 177 So. 3d 489, 495-96 (Fla. 2015).

Analysis of this collective evidence, alongside the applicable Florida state law, persuades the Court that Union Carbide is subject to suit in Florida for injury resulting from exposure to its Calidria-brand asbestos. Waite inhaled Defendant's Asbestos Products in Massachusetts in the 1940s through the 1970s, when Union Carbide was manufacturing and distributing the same Asbestos Products in Florida. However, he was only able to reasonably discover that he was physically impaired by an asbestos-related condition, namely, malignant mesothelioma, when he became symptomatic – likely around the time of his diagnosis in 2015, which, in any case, was many years after moving to Florida in the late 1970s. *See, e.g.*, the Act. Neither the arguments nor evidence presented by Defendant serve to otherwise obviate this conclusion. Accordingly,

the facts before the Court substantiate a finding of specific jurisdiction pursuant to the Florida long-arm statute, Fla. Stat. § 48.193(1)(a)(6). *See, e.g., High Tech Pet Products, Inc. v. Shenzhen Jianfeng Electronic Pet Product Co., Ltd.*, 2015 WL 926048, at *3 (M.D. Fla. Feb. 12, 2015) (finding specific jurisdiction pursuant to Fla. Stat. § 48.193(1)(a)(6), because defendant committed tortious act outside of Florida, "while engaging in solicitation within the state of Florida," which caused injury to plaintiff in Florida).

b. Due Process

The second prong of the personal jurisdiction inquiry focuses on whether "sufficient minimum contacts exist between the defendants and the forum state so as to satisfy 'traditional notions of fair play and substantial justice.'" *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626 (11th Cir. 1996) (internal citation omitted); *see also Int'l Shoe*, 326 U.S. at 316. With respect to this constitutional requirement, courts concern themselves with whether the conduct of the defendant is of a character that he "should reasonably anticipate being haled into court there." *Madara v. Hall*, 916 F.2d 1510, 1516 (11th Cir. 1990) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). A defendant's actions must, in some way, evince the fact that the defendant has purposefully availed himself "of the privilege of conducting activities within the forum." *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, *reh'g denied*, 358 U.S. 858 (1958)). Thus, the defendant must create a "substantial connection" with the forum state in order for the exercise of jurisdiction to be proper. *See id.* (citing *Burger King*, 471 U.S. at 475).

Defendant Union Carbide satisfies this requirement. As mentioned above, Union Carbide has participated in a lawsuit in Florida as a plaintiff, in which it sought the protections of the same laws that it is now attempting to disclaim. *See, e.g.*, ECF No. [38-13] (where Defendant

brought action against Florida power companies alleging violation of federal and Florida state antitrust laws). As noted *infra*, Union Carbide has been a defendant in numerous, recent cases litigated in Florida, including asbestos cases involving exposures to its "Calidria" brand asbestos, as implicated here. *See, e.g., Union Carbide Corp. v. Kavanaugh*, 879 So. 2d 42 (Fla. 4th Dist. Ct. App. 2004); *McConnell v. Union Carbide Corp.*, 937 So.2d 148 (Fla. 4th Dist. Ct. App. 2006). Indeed, the Florida Supreme Court recently affirmed the lower court's decision finding liability for Union Carbide for the very same conduct alleged in the present case. *See Aubin v. Union Carbide Corp.*, 2015 WL 6513924, at *17-18 (Fla. Oct. 29, 2015) ("The important aspect of strict products liability . . . remains true today: the burden of compensating victims of unreasonably dangerous products is placed on the manufacturers, who are most able to protect against the risk of harm, and not on the consumer injured by the product."). Accordingly, although Union Carbide is not a resident of Florida, it can reasonably expect to be haled into court in this state for alleged harm due to exposure to its Asbestos Products.

With respect to "fair play and substantial justice," courts must consider various factors to establish the reasonableness of jurisdiction. *Madara*, 916 F.3d at 1517 (citation omitted). These factors include "the burden on the defendant in defending the lawsuit, the forum state's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies and the shared interest of the states in furthering fundamental substantive social policies." *Id.* (citing *Burger King*, 471 U.S. at 477; *World-Wide Volkswagen*, 444 U.S. at 292). "Where these factors do not militate against otherwise permitted jurisdiction, the Constitution is not offended by its exercise." *Licciardello*, 544 F.3d at 1284.

Analysis of these factors makes it abundantly clear that requiring Defendant to litigate this case in Florida is consistent with the Due Process Clause of the Fourteenth Amendment.[10] First, Union Carbide makes no claim in the Motion that continuing this litigation in Florida, as opposed to New York, would impose any increased "burden" – nor could it. As demonstrated above, Union Carbide is involved in multiple ongoing mesothelioma cases in Florida and has Florida counsel. Presumably, Defendant will be litigating these cases with the same counsel, experts, and corporate representatives that it will use in this case, regardless of the outcome of this Motion. Its burden is, therefore, neither lessened nor heightened by allowing Plaintiffs to litigate here. The depositions of James Waite and Sandra Waite have already been taken, with Union Carbide in attendance. Other depositions of witnesses will necessarily occur in Florida, as all of James Waite's medical providers are located in Florida. Furthermore, because James Waite has also suffered asbestos exposures in Florida, witnesses who can speak to those exposures are only located in Florida – such as the retailers of the automotive parts used by him. Defendant litigates disputes throughout the country, including in Florida. Therefore, the absence of any burden to Defendant weighs heavily in favor of finding jurisdiction reasonable in this case.

Second, Florida has an indisputable interest in resolving litigation involving asbestos cancer that developed in Florida to a longtime Florida resident. Florida's legislature specifically noted this interest in passing the Asbestos Act, defined above: "A civil action alleging an asbestos or silica claim may be brought in the courts of this state if the plaintiff is domiciled in this state or the exposure to asbestos or silica that is a substantial contributing factor to the physical impairment of the plaintiff on which the claim is based occurred in this state." Fla. St.

[10] Much of the following reasonableness analysis is drawn from the Court's prior Order examining the same factors pursuant to general jurisdiction.

§774.205(1). Waite has lived in Florida for decades and was exposed in Florida to a number of Asbestos Products here as well; since mesothelioma is a cumulative disease, both the Massachusetts and Florida exposures likely contributed to Waite's risk and development of disease. *See Borel v. Fibreboard*, 493 F.2d 1076, 1083 (5th Cir. 1973) ("A worker's present condition is the biological product of many years of exposure to asbestos dust, with both past and recent exposures contributing to the overall effect."); ECF Nos. [38-17] (Expert Report of Arnold R. Brody, Ph.D.) at pp. 7-8, 22-24; [38-18] (Collegium Ramazzini Comments on the Causation of Malignant Mesothelioma) ("[T]he risk of malignant mesothelioma is related to cumulative exposures to asbestos in which all exposures – early as well as late – contribute to the totality of risk."). Moreover, Florida has an interest in resolving this dispute because Plaintiffs' evidence shows that Defendant was selling the exact same Asbestos Products in Florida for use in joint compound products (among others) at the time that Waite was using those products in Massachusetts. For these reasons, Florida's interest in this case weighs in favor of finding jurisdiction over Union Carbide.

Third, Plaintiffs' interest in obtaining convenient and effective relief in Florida is substantial. Plaintiffs chose to bring this case in the state where, not only was Waite exposed to asbestos, but his cancer developed biologically. He was diagnosed in Florida, he received medical treatment in Florida – and, thus, his cause of action accrued in Florida. Per Florida law, Waite has sued numerous responsible parties against whom comparative fault will be apportioned by the jury, should this case survive to trial. Plaintiffs have an interest in obtaining full compensation for his injuries, and the most effective and efficient relief would result from one case in which all responsible parties were tried together. If the Court were to dismiss all claims against Union Carbide, it would be necessary for Plaintiffs to file lawsuits in multiple

states to try to piece together full compensation for an indivisible injury. Thus, this factor weighs heavily in favor of finding jurisdiction proper in Florida.

Likewise, consideration of the fourth and fifth due process factors counsels for the exercise of jurisdiction here. Multiple lawsuits would also create a significant danger of inconsistent verdicts. For example, Florida follows apportionment of fault, while Massachusetts is a joint and several liability state. Accordingly, if Defendant's theory is adopted, and a separate lawsuit is filed in Massachusetts against Defendant, neither the Plaintiffs nor Union Carbide would be able to obtain jurisdiction over the remaining Defendants in the Florida case – precluding claims or crossclaims against them. *See, e.g.*, Motion for Leave to Amend, discussed *infra* (requesting leave to file amended answer and affirmative defendants naming new *Fabre* defendants for apportionment of fault). It would be unlikely that Florida and Massachusetts juries, applying different substantive law against different parties, would reach identical results with respect to the percentage of liability owed by Defendant – let alone that they would reach identical determinations of the amount of the Plaintiffs' damages. For the same reasons, the Court finds that the interests of other affected forums in obtaining efficient resolution of the dispute and advancement of substantive social policies counsel in favor of the exercise of jurisdiction.

For the above-stated reasons, the Court concludes that the exercise of jurisdiction in this case clearly comports with traditional notions of fair play and substantial justice. *See, e.g.*, *World-Wide Volkswagen*, 444 U.S. at 298 ("The forum State does not [] exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.").

B. Motion for Leave to Amend and Motion for Extension of Time to Amend

In the Motion for Leave, Union Carbide seeks leave from the Court to file an amended answer and affirmative defenses. Generally, Rule 15 governs amendment to pleadings. Apart from initial amendments permissible as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.* However, "[a] district court need not . . . allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001).

Here, Union Carbide seeks to amend its Answer and Affirmative Defenses in order to identify with specificity those nonparties against whom it may be entitled to an apportionment of non-economic damages pursuant to Fla. Stat. § 768.81(3) and *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993), *receded from in part, Wells v. Tallahassee Mem'l Reg'l Med. Ctr.*, 659 So. 2d 249, (Fla. 1995). Fla. Stat. § 768.81(3) recognizes the right of a defendant seeking apportionment to amend its answer to identify non-parties that the defendant has determined to be at fault: "In order to allocate any or all fault to a nonparty, a defendant must affirmatively plead the fault of a nonparty and, absent a showing of good cause, identify the nonparty, if known, or describe the nonparty as specifically as practicable, either by motion or in the initial responsive pleading when defenses are first presented." Fla. Stat. § 768.81(3)(d). The Florida Supreme Court has also expressly recognized the right and obligation of a defendant to amend its Answer to identify non-parties subject to apportionment: "[I]n order to include a nonparty on the verdict form pursuant to *Fabre*, the defendant must plead as an affirmative defense the negligence of the

nonparty and specifically identify the nonparty . . . notice prior to trial is necessary because the assertion that noneconomic damages should be apportioned against a nonparty may affect both the presentation of the case and the trial court's rulings on evidentiary issues." *Nash v. Wells Fargo Guard Serv., Inc.*, 678 So. 2d 1262, 1264 (Fla. 1996).

Plaintiffs contend that, because the Motion was filed on the date of the deadline and allegedly fails to provide the requisite specificity, they will be precluded from obtaining necessary discovery. However, the Court finds that this does not amount to prejudice barring amendment, which the Federal Rules counsel should be given freely before the expiration of the amendment deadline. Ultimately, the proposed amendment to add additional *Fabre* defendants appears to require little discovery and involve events well-known to Plaintiffs. Moreover, discovery is not closed. Thus, Plaintiffs have the opportunity to conduct additional discovery if so required. Likewise, there has been no bad faith or undue delay on the part of Union Carbide, as it has been evaluating the additional non-parties identified through discovery, and sought leave to amend prior to expiration of the February 1, 2016, deadline for filing motions to amend set forth in this Court's Scheduling Order. *See* Scheduling Order at 1. Nor would amendment be futile; the non-parties identified in Union Carbide's proposed amendment may potentially be liable for Plaintiffs' alleged injuries. Additionally, because Union Carbide raised apportionment as a defense in its original Answer and Affirmative Defenses, the proposed amendments will not alter the basic issues in this case. For all of these reasons, the Court will grant Defendant's Motion for Leave to file an amended answer and affirmative defenses.

All Defendants collectively make a similar request in the Motion for Extension of Time to Amend. On December 2, 2015, the Court entered a Scheduling Order, ECF No. [33], which established February 1, 2016, as the deadline for parties to file motions to amend pleadings or

join parties. In the Motion to Amend, Defendants request that the Court allow them until March 31, 2016, to file amended answers and affirmative defenses to Plaintiffs' Complaint "to identify those non-parties against whom they may be entitled to an apportionment of non-economic damages pursuant to Fla. Stat. § 768.81(3) and *Fabre v. Marin*, 623 So. 2d 1182 (Fla. 1993)." Motion to Amend at 1. Plaintiffs respond that Defendants' Motion fails to demonstrate good cause and to provide requisite specificity. ECF No. [71] ("Plaintiff's Response to Motion to Amend") at 2. The Waites further allege that an extension of the deadline to amend would prejudice them by precluding them from conducting meaningful discovery regarding the factual basis for and evidence supporting Defendants' apportionment claims. *Id.* at 4-5. Defendants, in turn, cast doubt on Plaintiffs' claims, pointing out that Plaintiffs originally proposed the deadline for *Fabre* amendments for a date five days after the discovery cutoff, ECF No. [31]. *See* ECF No. [81] at 2 ("Defendant's Reply to Motion to Amend").

Requests to deviate from a scheduling order require a showing of "good cause." Fed. R. Civ. P. 16(b)(4). "To establish good cause, the party seeking the extension must establish that the schedule could not be met despite the party's diligence." *Ashmore v. Sec'y, Dep't of Transp.*, 503 F. App'x 683, 685-86 (11th Cir. 2013). Here, Defendants argue that good cause exists to modify the scheduling order because there is still substantial discovery left to be conducted, and this discovery may reveal non-parties who are at fault in this case. They have sought the extension for the limited purpose of amending to add *Fabre* defendants. Accordingly, any extension will not disrupt any other deadline in the Scheduling Order, including the April 29, 2016, discovery deadline and the date for trial. Furthmore, to the extent that Plaintiffs wish to conduct further discovery after Defendants file the requested amendment by March 31, 2016, they will have a remaining month of discovery in which to do so. Therefore, the Court finds that

Defendants have shown good cause for an extension of the deadline to amend pleadings. The Motion for Extension of Time to Amend is granted.

IV. Conclusion

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion for Reconsideration, **ECF No. [63]**, is **GRANTED IN PART AND DENIED IN PART**.
    a. Union Carbide is not subject to general jurisdiction in Florida.
    b. However, the Court has specific jurisdiction over Union Carbide pursuant to the present controversy.
    c. The Request for certification to the Eleventh Circuit, pursuant to 28 U.S.C. §1292(b), is denied.
2. Defendant's Motion for Leave to File Amended Answer and Affirmative Defenses, **ECF No. [67]**, is **GRANTED**. Union Carbide is hereby **DIRECTED TO REFILE** its Amended Answer and Affirmative Defenses separately.
3. Defendants' Motion for Extension of Time to Amend Answers and Affirmative Defenses, **ECF No. [66]**, is **GRANTED**. Defendants are hereby **DIRECTED TO FILE** any Amended Answers and Affirmative Defendants **no later than March 21, 2016**.

DONE AND ORDERED in Miami, Florida, this 8th day of March, 2016.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record