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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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AMTEC INTERNATIONAL OF NY CORP.,

Plaintiff,

-against-

BEVERAGE ALLIANCE LLC,

Defendant.
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MEMORANDUM & ORDER

10-CV-1147 (NGG) (SMG)

NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiff Amtec International of NY Corp. ("Amtec") alleges that Defendant Beverage Alliance LLC ("BA") breached statutory and contractual obligations to deal with Amtec as a beer wholesaler. (See Compl. (Docket Entry # 1).) Amtec's Complaint includes five claims for relief: a claim for declaratory relief under 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 (Count I), claims for damages based on violations of the alcohol beverage laws of New York, New Jersey, and Connecticut (Counts II, III, and IV), and a claim for damages for breach of contract (Count V). (Id.)

BA moves to dismiss the Complaint on several grounds. (See Def. Mot. (Docket Entry #9).) First, BA argues that, insofar as Counts I, II, and V are based on New York law, they should be dismissed under Federal Rule of Civil Procedure 12(b)(6). (See Def. Mem. (Docket Entry # 10) at 3). According to BA, Counts IV and V should be dismissed under Federal Rule of Civil Procedure 12(b)(1) because the court lacks subject matter jurisdiction to adjudicate them. (Id.) BA further asserts that, if Amtec's claims based on New York law are dismissed, the remaining claims should be dismissed under Federal Rule of Civil Procedure 12(b)(2) for lack of

personal jurisdiction, and under Federal Rule of Civil Procedure 12(b)(3) because venue is improper. (Id. at 3-4.) As set forth below, BA's motion is denied except as it relates to the court's subject matter jurisdiction over the New Jersey and Connecticut law claims. The parties shall submit supplemental briefing regarding those issues.

I. THE LEGAL SUFFICIENCY OF THE NEW YORK LAW CLAIMS

A. Standard of Review

A court evaluating a Rule 12(b)(6) motion must "accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the nonmoving party." Taylor v. Vermont Dep't of Educ., 313 F.3d 768, 776 (2d Cir. 2002). Under Federal Rule of Civil Procedure 8(a)(2), a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." The Supreme Court has further elaborated, however, on the requirements that a complaint must satisfy to survive a Rule 12(b)(6) motion. Specifically, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

B. Amtec's Factual Allegations

Amtec is a New York corporation with its principal place of business located at 430 Morgan Avenue, Brooklyn, New York. (Compl. ¶ 1.) Amtec is a licensed distributor and importer of alcoholic beverages in, among other states, New York, Connecticut, and New Jersey (the "tri-state area"). (Id. ¶ 2.)

In January 2003, Carlsberg Okocim S.A. ("Okocim") appointed Amtec as the importer, distributor, and exclusive brand agent for several Okocim-manufactured beers (the "Okocim

products") in various states.[1] (Id. ¶¶ 9-11.) In doing so, Okocim granted Amtec the authority to enter into sales contracts with local wholesalers and agents. (Id. ¶¶ 9, 10.) Okocim and Amtec entered into a separate agreement in which Okocim granted Amtec the right to be the exclusive distributor of specific Okocim products in certain states. (Id. ¶ 11, 12.) In return, Amtec agreed to take certain steps to promote and distribute the Okocim products.[2] (Id. ¶ 12.)

Amtec subsequently appointed itself, in a written "agreement," to be the exclusive distributor of the Okocim products in the tri-state area. (Id. ¶ 13.) Amtec then registered as the "exclusive distributor" of the Okocim products in New York, New Jersey and Connecticut.[3] (Id. ¶¶ 14-16.) Although it is not explicit in the Complaint, it appears that Okocim then supplied beer to Amtec for some period of time. (See generally id. ¶¶ 26, 30.)

In November 2007, Okocim notified Amtec that it was terminating their agreement and would be appointing another entity, Carlsberg USA, as importer of the Okocim products. (Id. ¶¶ 18,19.) Okocim indicated, however, that it intended to retain Amtec as a *distributor* in the tri-state area provided that Amtec "continued to remain the registered distributor [(i.e., "wholesaler" in New York)] in those states." (Id. ¶ 19.) On approximately January 31, 2008, the President of Carlsberg USA sent a letter to Amtec containing a "proposed framework for the working relationship between Carlsberg USA as importer, and Amtec, as distributor" in the tri-state area. (Id. ¶ 20.)

In January 2009, Okocim officially appointed Carlsberg USA as the exclusive importer for Okocim products in the United States, a role previously occupied in large part by Amtec. (Id.

[1] It appears that, at some point, the entity Carlsberg Polksa succeeded Carlsberg Okcocim S.A. (See Pl. Mem. (Docket Entry # 12) at 3 n.3.) To avoid confusion, Amtec refers to both entities as "Okocim." (See id.) The court also adopts this approach.

[2] Neither Amtec nor BA has provided the court with a copy of any of the agreements referenced in the Complaint.

[3] It appears that Amtec means that it registered as a "wholesaler," at least in New York. See N.Y. Alco. Bev. Cont. Law § 53.

¶ 21.) Just three months later, however, Okocim replaced Carlsberg USA with another entity, BA. (Id. ¶ 22.) BA is a Delaware limited liability company with its principal place of business in Connecticut. (Id. ¶ 3.) Its sole member is Michael H. Mitaro, who resides in Connecticut. (Id. ¶ 4.) The President of BA is the former president of Carlsberg USA. (Id. ¶ 22.)

Initially, BA indicated that it would continue to deal with Amtec as the distributor of Okocim products in New York and Connecticut. (Id. ¶¶ 23, 24, 27.) BA sought to terminate Amtec as an Okocim distributor in New Jersey, but then purported to withdraw that termination. (Id. ¶¶ 25, 28.) Nonetheless, on October 27, 2009, BA informed Amtec that it was terminating all of Amtec's distribution rights. (Id. ¶ 29.) On December 18, 2009, BA rejected a purchase order from Amtec, stating that "it remains BA's position that Amtec holds no rights to distribute [the Okocim products]." (Id. ¶ 31.)

C. New York Law Governing Beer Distribution

The relationship between "brewers" and "wholesalers" in New York is governed by Alcoholic Beverage Control Law § 55-c ("§ 55-c"), which the New York Legislature enacted in 1996. N.Y. Alco. Bev. Cont. Law § 55-c. Section 55-c is part of New York's statutorily mandated three-tier system for the distribution of beer. Those three tiers are composed of (1) "brewers," (2) "wholesalers," and (3) local retailers. See generally John G. Ryan, Inc. v. Molson USA, LLC, No. 05-CV-3984 (NGG), 2005 U.S. Dist. LEXIS 42973, at *9 (E.D.N.Y Nov. 7, 2005).

As this court explained in Ryan, beer distributors (or "wholesalers") tend to become associated with the brands they distribute. Id. at *10. Absent statutory protection, brewers could arbitrarily wipe out investments made by wholesalers to generate such goodwill. In Ryan, after reviewing the relevant legislative history, this court concluded that § 55-c was enacted by the

New York Legislature "to serve as a remedial measure to level the playing field between brewers and distributors/wholesalers by providing procedural and substantive protections to distributors." Id.; see also Garal Wholesalers, Ltd. v. Miller Brewing Co., 751 N.Y.S.2d 679, 685, 688 (N.Y. Sup. Ct. 2002) (reaching a similar conclusion).

The scope of § 55-c is delineated by a series of specialized and interrelated statutory definitions. The statute defines a "beer wholesaler" or "wholesaler" as "the holder of a wholesaler's license . . . who purchases, offers to sell, resells, markets, promotes, warehouses or physically distributes beer sold by a brewer." N.Y. Alco. Bev. Cont. Law § 55-c(2)(d). The statute's definition of "brewer" is considerably broader than the word's ordinary English usage. A "brewer" is defined as

> [A]ny person or entity engaged primarily in business as a brewer, manufacturer of alcoholic beverages, importer, marketer, broker or agent of any of the foregoing who sells or offers to sell beer to a beer wholesaler or any successor to a brewer.

Id. § 55-c(2)(b). Broadly, then, a "brewer" is not necessarily an entity that combines starch and yeast to produce a beverage, but simply an entity whose primary business occupies some relation to producing, marketing or distributing beer *and* who sells or offers to sell beer to a registered "wholesaler." Id.

The definition of "brewer" also includes a "successor to a brewer," another term that is statutorily defined. See id. § 55-c(2)(b), § 55-c(2)(c). The statute defines a "successor to a brewer" as:

> [A]ny person or entity which acquires the business or beer brands of a brewer, without limitation, by way of the purchase, assignment, transfer, lease, or license or disposition of all or a portion of the assets, business or equity of a brewer in any transaction, including merger, corporate reorganization or consolidation or the formation of a partnership, joint venture or other joint marketing alliance.

Id. § 55-c(2)(c). Because any party that satisfies this definition is classified as a "brewer," successors to brewers are subject to the same statutory obligations as brewers more generally.

The primary substantive and procedural components of § 55-c are its prohibition on brewers canceling, failing to renew, or terminating an "agreement" with a wholesaler absent "good cause" and prior notification. Id. §§ 55-c(4), 55-c(5).[4] An "agreement" is defined as:

> [A]ny contract, agreement, arrangement, course of dealing or commercial relationship between a brewer and a beer wholesaler pursuant to which a beer wholesaler is granted the right to purchase, offer for sale, resell, warehouse or physically deliver beer sold by a brewer.

Id. § 55-c(2)(a). This definition clearly covers non-written agreements, despite § 55-c(3)'s requirement that "beer offered for sale in this state by a brewer to a beer wholesaler shall be sold and delivered pursuant to a written agreement."

Section 55-c may not be superseded by contract. See id. § 55-c(11); see also Garal, 751 N.Y.S.2d at 683. Section 55-c(6) provides that a beer wholesaler may maintain a civil action in a court of competent jurisdiction in New York if a brewer fails to comply with the requirements of § 55-c. It further states that:

> [I]n any such action the court may grant such equitable relief as is necessary or appropriate, considering the purposes of this section, to remedy the effects of any failure to comply with the provisions of this section or the effects of conduct prohibited hereunder, including declaratory judgment, mandatory or prohibitive injunctive relief, or preliminary or other interim equitable relief.

Id. § 55-c(6).

[4] "Good cause" is statutorily defined. See N.Y. Alco. Bev. Cont. Law § 55-c(2)(e).

D. Application to the Instant Case

Amtec's claims under § 55-c are based on its allegation that BA is a "successor brewer" and therefore could not terminate Amtec's right to wholesale Okocim products absent good cause. (See Compl. ¶ 36; see also Pl. Mem. (Docket Entry # 12) at 6-22.) BA argues that the Complaint fails to allege facts that support this theory. Specifically, BA asserts that, as a matter of law, it is not a successor brewer because it did not acquire its importation and distribution rights from another importer/distributor (i.e., Amtec or Carlsberg USA), but from Okocim itself. (See, e.g., Def. Mem. 2-3.) As set forth below, however, the court finds that the Complaint states a claim for relief under Amtec's sucessorship theory because Okocim is properly classified as a brewer and BA classified as its successor. The court begins by considering the status of various entities *before* Okocim sought to terminate Amtec as importer and then considers their *current* status, following Okocim's appointment of BA as its importer/distributor.

In doing so, the court is mindful that its "cardinal function in interpreting a New York statute is to ascertain and give effect to the intent of the legislature." Tom Rice Buick-Pontiac v. Gen. Motors Corp., 551 F.3d 149, 154 (2d Cir. 2008) (citing Abrams v. Ford Motor Co., 74 N.Y.2d 495, 500 (1989)). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof." Id. at 154-55 (citing Majewski v. Broadalbin-Perth Cent. Sch. Dist., 91 N.Y.2d 577, 583 (1998)) (internal punctuation omitted). "[A]bsent ambiguity the courts may not resort to rules of construction to broaden the scope and application of a statute, because no rule of construction gives the court discretion to declare the intent of the law when the words are unequivocal." Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98, 107 (1997) (internal citation omitted).

1) Pre-Termination Status Under § 55-c

Initially, Okocim appears to have envisioned that Amtec, in its multi-state role as importer, distributor, and brand agent for Okocim products, would appoint third-parties to serve as wholesalers in individual states. It appears plausible that, had this actually occurred in New York, the arrangement would have shielded Okocim from classification as a "brewer" under § 55-c. This would have been the case because Okocim itself would not have been "selling or offering to sell" beer to a local wholesaler. See N.Y. Alco. Bev. Cont. Law § 55-c(2)(b). Instead, Amtec – as an importer intermediary – would have been classified as a "brewer" with respect to any wholesaler it appointed and to which it sold beer. Id.

That is not what actually happened. Rather than appoint third-party wholesalers for the tri-state area, Amtec appointed itself to serve in that role. Either there was nothing in Okocim's contract with Amtec preventing Amtec from doing so or Amtec did not seek to enforce any contractual rights it did possess.[5] Instead, Okocim shipped Okocim products to Amtec, who sold them in its role as a New York wholesaler. BA nonetheless argues that Okocim was not a "brewer" under § 55-c because Amtec was simultaneously *both* a wholesaler of the Okocim products and a brewer with respect to itself. (See Def. Mem. 2.)

This argument is not persuasive. Applying the plain language of § 55-c, once Amtec appointed itself as the New York wholesaler and Okocim shipped Amtec beer, Okocim was a "brewer." That is, Okocim was an "entity engaged primarily in business as a brewer [or] manufacturer of alcoholic beverages . . . who sells . . . beer to a beer wholesaler" in New York. N.Y. Alco. Bev. Cont. Law § 55-c(2)(b). It is of no significance that at one time Okocim may not have anticipated this classification, or even sought to avoid it.

[5] If Okocim did not wish to assume the statutory obligations of a brewer it presumably should have contractually required Amtec to appoint other parties as wholesalers and refused to ship beer to Amtec once it appointed itself as wholesaler.

BA also argues that – regardless of the *merits* of the theory that Okocim was a brewer – the Complaint does not sufficiently allege it. (See Def. Reply (Docket Entry # 14) at 2.) According to BA, this theory "is contrary to the allegations" in the Complaint, which BA asserts leaves "no doubt" that the predecessor brewer to which Amtec is referring is "Amtec itself." Id. BA is – despite some creative quoting and emphasis – simply incorrect. The allegations in the Complaint are entirely consistent with the theory that Okocim was a brewer with respect to Amtec and that Okocim (rather than Amtec or Carlsberg USA) is BA's "predecessor brewer." By contrast, BA's theory that Okocim sold beer to Amtec and Amtec then sold that same beer to itself, thereby becoming both a "wholesaler" and a "brewer," defies logic, regardless of the labels that BA and Amtec affixed to themselves. Moreover, disregarding the realities of the parties' relationships in this manner would eviscerate the protections of § 55-c and undermine the New York Legislature's clear intent that it not be superseded by private agreement.

2) Post-Termination Status Under § 55-c

In early 2009, Okocim replaced Amtec as importer, first with Carlsberg USA and then with BA. As the court has explained, Okocim was a brewer with respect to Amtec and therefore could not terminate its supply obligations absent good cause. Whether BA is subject to those same obligations turns on whether BA is Okocim's "successor" under § 55-c.

Applying the plain language of the statute, the court finds that BA was Okocim's successor. That is, when Okocim appointed BA as importer, BA "acquired the business or beer brands of a brewer [(Okocim)] . . . by way of the purchase, assignment, transfer, lease, or license or disposition of all or a portion of the assets, business or equity of a brewer [(Okocim)] in [a] transaction . . . [consisting of] the formation of a partnership, joint venture or other joint marketing alliance." N.Y. Alco. Bev. Cont. Law § 55-c(2)(c). Indeed, BA itself states that

sucessorship obligations arise from "transactions between [a] new and former supplier pursuant to which the new supplier 'acquires' the right to supply the brands in question." (Def. Mem. 6.)

Moreover, even if there were any ambiguity in this application of the definition of a successor brewer, this interpretation of § 55-c is the best way to further the New York Legislature's evident intent in enacting the statute. See Tom Rice Buick-Pontiac, 551 F.3d at 154. When a brewer interposes an intermediary in an existing supply relationship with a wholesaler, statutorily imposing the brewer's obligations on the intermediary shields the wholesaler from arbitrary termination. Extending the brewer's obligations in this manner is also more efficient than depriving the wholesaler of any remedy other than a lawsuit against the predecessor brewer. Indeed, if the New York Legislature intended for such a suit to be a wholesaler's only remedy when a brewer transferred its supply business, there would have been no need for a sucessorship provision.

The majority of BA's arguments about the meaning of § 55-c's sucessorship definition are premised on BA's assumption that Okocim was *not* a brewer (and that Amtec was). Accordingly, those arguments are largely irrelevant to the court's analysis. BA argues that there must be transactional privity between a brewer and its successor. (See, e.g., Def. Mem. 6.) Such privity exists between Okocim and BA.[6] The Complaint is legally sufficient under § 55-c based on Okocim's status as a brewer and BA's motion must be denied with respect to the New York claims.

[6] Under BA's definition of sucessorship, where a manufacturer who is not a "brewer" terminates and replaces an importer-distributor, the new importer-distributor is not be subject to any successor obligations. (Def. Mem. 6.) Presumably, its only remedy would be to sue the previous importer-distributor. This situation, while interesting, is not present here and the court does not reach it.

II. THE NEW JERSEY AND CONNECTICUT CAUSES OF ACTION

Amtec brings similar claims against BA under New Jersey and Connecticut law. (See Compl. ¶¶ 43-54, 55-59.) Although the bulk of BA's motion to dismiss addresses Amtec's New York law claims, BA also argues that Amtec's remaining claims should be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) because: (1) Amtec has not exhausted its administrative remedies in Connecticut, and (2) the New Jersey claims were not filed in a New Jersey court.[7] (Def. Mem. at 12-16.)

At the outset, the court notes that – despite its critical importance – the parties have not addressed the issue of subject matter in any depth. Amtec devotes less than three pages of its Opposition to the subject. (See Pl. Mem. at 22-24.) Moreover, the briefing that the parties do offer is not particularly illuminating. Accordingly, the court will order supplemental briefing related to subject matter jurisdiction. To focus the parties' future efforts, the court offers the following analysis.

A. The Connecticut Claims

BA argues that the court lacks subject matter jurisdiction over Amtec's claims insofar as they are based on the Connecticut Liquor Control Act, Conn. Gen. Stat. § 30-1 et seq., because Amtec has not exhausted its administrative remedies. (Def. Mem. 13-14.) But, as Amtec points out (Pl. Mem. 24), the Connecticut Liquor Control Act only provides an administrative procedure through which a "manufacturer or out-of-state shipper" – here, BA – can terminate a wholesaler. See Conn. Gen. Stat. § 30-17(a)(2). Specifically, a manufacturer or out-of-state shipper must, prior to termination, notify the Connecticut Department of Consumer Protection of the reasons it wishes to terminate a wholesaler and then prevail at an administrative hearing. Id.

[7] Additionally, BA argues that "once Amtec's claims under New York law are dismissed, the remainder of Amtec's claims should be dismissed" for lack of personal jurisdiction and venue. (Def. Mem. 16.) Because the court is denying BA's motion to dismiss the New York claims, it does not reach these arguments.

Although terminations that do not follow this procedure are not "effective," the Connecticut Liquor Control Act does not provide any procedural avenue for a wholesaler – such as Amtec – to challenge an unauthorized termination. See id.

Exhaustion is not a prerequisite to jurisdiction where available administrative remedies "provide no genuine opportunity for adequate relief." Howell v. INS, 72 F.3d 288, 291 (2d Cir. 1995) (internal quotation omitted); see also Bing Wu v. Chang's Garden of Storrs, LLC, 2009 U.S. Dist. LEXIS 105201 (D. Conn. Nov. 10, 2009) (exhaustion of Connecticut administrative remedies not required when no relevant remedies exist). Accordingly, to the extent that the Connecticut Department of Consumer Protection could not afford Amtec the relief it seeks here, exhaustion is not necessary.[8]

It appears that the only relief the Department of Consumer Protection could have provided was a hearing regarding prospective termination, and that it could only have done so *at BA's request*. At least initially, BA chose not to pursue that hearing. Then, on July 6, 2010 – four days *after* Amtec served its Opposition to BA's motion – BA sent Amtec a notification of termination, copying the Department of Consumer Protection. (See Ederer Decl. (Docket Entry # 15) Ex. 2.) Having done so, BA asserts – with truly remarkable temerity – both that it was "predictable" that Amtec would argue that it was forced to file this action because BA had chosen not commence administrative proceedings *and* that "[n]ow that an administrative proceeding *has been initiated* in Connecticut," the court does not have subject matter jurisdiction. (Def. Reply 10 (emphasis added).)

It seems unlikely that BA can unilaterally divest the court of jurisdiction in this manner. This is particularly true insofar as Amtec seeks relief the Department of Consumer Protection cannot provide. Nonetheless, because Amtec has not had the opportunity to address the impact

[8] BA asserts – without any authority – that "of course" Amtec could have pursued such a hearing. (Def. Reply 10.)

of any pending proceedings in Connecticut, the court will order supplemental briefing on this subject.

BA also argues that the court lacks jurisdiction because "there is no private right of action under the Connecticut Liquor Act in any court." (Def. Mem. 14 (citing Eder Bros., Inc. v. Wine Merchants of Connecticut, Inc., 275 Conn. 363, 374 (2005).) BA has not provided any authority holding that the absence of a private right of action would impact the court's *jurisdiction*. It is at least plausible that this issue would be better addressed as part of a motion pursuant to Rule 12(b)(6).[9] Accordingly, the court will also consider supplemental briefing on that subject.

B. The New Jersey Claims

With respect to the New Jersey claims, BA argues that the court lacks subject matter jurisdiction because the New Jersey Malt Beverage Practices Act (the "New Jersey MBP Act"), N.J. Stat. § 33:1-93.12 et. seq., requires such claims to be adjudicated in New Jersey. (Def. Mem. at 15.) Neither BA nor Amtec has addressed the question of whether New Jersey *could* impose such a limit on this court's jurisdiction. In any event, however, it does not appear that the New Jersey MBP Act even seeks to impose such a limit on where claims under that Act may be heard.

BA cites two provisions of the New Jersey MBP Act in support of its argument. One provision states that brewers "may" bring an action based on a violation of the Act "in the Superior Court of the State of New Jersey." N.J. Stat. § 33:1-93.18(a). The other provision states that compliance with the laws governing the relations between brewers and wholesalers "shall be determined *by a court of this State* in the context of a specific case or controversy

[9] The court also notes that, although the Connecticut Supreme Court found that the Connecticut Liquor Act did not generally confer private rights of action, it also concluded that violations of the Act could provide the basis for claims under the Connecticut Unfair Trade Practices Act. Eder Bros, 275 Conn. at 374.

among wholesalers and brewers only, and not by generally applicable rule, regulation or otherwise." N.J. Stat. § 33:1-93:15(e) (emphasis added).

It appears, however, that – as a matter of New Jersey law – such language only serves to *create a cause of action*, not to putatively limit where such an action might be brought. See Sullivan v. Chrysler Motors Co., No. 94-CV-5016, 1997 U.S. Dist LEXIS 2503, at *5-*6 (D.N.J. Feb. 28, 1997) ("[L]anguage which refers to an action in 'the Superior Court of New Jersey' does not represent a legislative intent to bar a plaintiff from enforcing a particular claim in the federal courts or the courts of other states."); Kubis & Perszyk v. Sun Microsystems, 146 N.J. 176, 196 (1996) (similar language did not preclude "courts in other states, both state and federal" from hearing cases arising under New Jersey Franchise Act). Nonetheless, the court will also consider supplemental submissions relating to this issue.

III. CONCLUSION

For the foregoing reasons, BA's motion to dismiss is DENIED, except as it relates to the court's subject matter jurisdiction over Amtec's Connecticut and New Jersey claims. BA and Amtec shall submit supplemental briefing related to this issue as follows: Amtec shall serve and file a supplemental brief by March 8, 2011; BA shall serve and file its response by March 25, 2011.

SO ORDERED.

s/NGG

Dated: Brooklyn, New York
January 28, 2011

NICHOLAS G. GARAUFIS
United States District Judge