

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LYCOMING ENGINES, an unincorporated division of AVCO Corporation,	: NO. 19-0663
	:
Plaintiff,	:
	:
vs.	: CIVIL ACTION –
	: DECLARATORY JUDGMENT
CHRISTIANSEN AVIATION, INC.,	:
	:
Defendant.	: <i>Two Preliminary Objections</i>

**OPINION & ORDER**

On April 25, 2019, Plaintiff Lycoming Engines (“Lycoming”), an unincorporated division of AVCO Corporation, which was incorporated in Delaware and possesses a principal place of business at 652 Oliver Street, Williamsport, Pennsylvania, brought an action for declaratory relief pursuant to the Pennsylvania Declaratory Judgments Act (“DJA”), 42 Pa.C.S.A. § 7531 *et seq.*, against Defendant Christiansen Aviation, Inc. (“Christiansen”).<sup>1</sup> Lycoming manufactures helicopter engines as well as fix wing reciprocating aircraft engines.<sup>2</sup> Christiansen owns and operates aircrafts.<sup>3</sup>

In Count I of Lycoming’s Complaint, it requests that this Court declare any potential claim by Christiansen for economic damages related to an alleged defective replacement connecting rod bushing (“replacement bushing”) void based on the Authorized Service Center Agreement (“Agreement”), which both parties signed.<sup>4</sup> In Count II, Lycoming requests that this Court declare the Limited Warranty related to replacement parts for reciprocating aircraft engines (“Warranty”) preemptive as to

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<sup>1</sup> Plaintiff’s Complaint for Declaratory Judgment 1 (Apr. 25, 2019) [hereinafter “Plaintiff’s Complaint”].

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.* at 5.

Christiansen's claims for economic damages related to the replacement bushing.<sup>5</sup>

On May 22, 2019, Christiansen filed the instant *Preliminary Objections*.<sup>6</sup> First, it asserts that the replacement bushing was installed on July 30, 2011 and the Agreement terminated on June 22, 2011; therefore, the Agreement's forum selection clause is inapplicable and the Court does not possess jurisdiction over this claim.<sup>7</sup> Second, Christiansen argues that reliance on the DJA is improper here since "Lycoming is attempting to adjudicate the validity of a defense to a potential future lawsuit, i.e. that any lawsuit relating to the defective connective rod bushing [. . .] must be brought in Pennsylvania and/or recovery is barred by the term of the limited warranty."<sup>8</sup> Christiansen notes that in *Wirerope Works v. Susquehanna Health System* this Court dismissed preliminary objections because the DJA was improperly utilized in an attempt to litigate other lawsuits.<sup>9</sup>

On June 7, 2019, Christiansen filed its *Brief in Support of Preliminary Objections to Plaintiff's Complaint*. On June 24, 2019, Lycoming filed its *Brief in Opposition to Defendant's Preliminary Objections*. On August 1, 2019, this Court held argument on Christiansen's objections and reserved decision. On August 15, 2019, the Court requested re-argument for clarification on the incorporated nature of the Warranty. The Court finds as follows:

I. Christiansen's First Preliminary Objection is **GRANTED IN PART**.

Relevant to this proceeding, Lycoming avers the following in its Complaint:

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<sup>5</sup> *Id.* at 6.

<sup>6</sup> Defendant's Preliminary Objections to Plaintiff's Complaint (May 22, 2019).

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 4.

10. [O]n June 23, 2009, the Parties entered into the Agreement wherein Lycoming granted Christiansen the privilege to conduct service, repair and maintenance on Lycoming engines and to purchase, sell and service Lycoming engines, part[s] and accessories (“Lycoming Products”).<sup>10</sup>

11. Pursuant to the terms of the Agreement, Christiansen accepted the appointment as a Lycoming authorized service center and agreed to provide prompt and efficient maintenance and service of Lycoming Products.<sup>11</sup>

[. . .]

14. Pursuant to the Limited Warranty, Lycoming warranted each Lycoming replacement part against defects in material or workmanship for the Warranty Period which began the earlier of the date the replacement part was first operated or used for any purpose or [ ] twenty-four (24) months after the replacement part shipped from Lycoming and ended twelve (12) or twenty-four (24) months thereafter depending on the part.<sup>12</sup>

15. The Limited Warranty for replacement parts expressly limited Lycoming’s liability to replace or repair a defective replacement part and expressly excluded Lycoming’s liability for any direct, consequential, incidental, exemplary or special damages.<sup>13</sup>

16. Pursuant to the terms of the Agreement, Christiansen agreed to indemnify and hold Lycoming harmless from any and all claims of damages of any nature whatsoever, and legal costs, including attorneys’ fees, incurred by Lycoming as a result of or arising from Christiansen’s representations, negligent act, failure to act properly and/or omissions.<sup>14</sup>

17. Pursuant to the terms thereof, the Agreement expired on June 22, 2011 but the limitations and liabilities thereof continued to *apply to any Lycoming Product purchased during the Agreement period*.<sup>15</sup>

18. By letter dated April 10, 2019, Christiansen, by and through its attorneys, threatened litigation relative to an alleged defective connecting

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<sup>9</sup> *Id.* (citing *Wirerope Works v. Susquehanna Health System*, No. 14-3089, Opinion & Order: Preliminary Objections (Lyco. Com. Pl. Mar. 31, 2015)).

<sup>10</sup> Plaintiff’s Complaint 3.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* (emphasis added).

rod bushing in one of its aircraft[s] (“Letter”) [. . . ]<sup>16</sup>

19. Pursuant to the Letter, Christiansen claims a defective connecting rod bushing was installed as a replacement part during a field overhaul on July 30, 2011.<sup>17</sup>

20. *Upon information and belief*, Christiansen purchased the alleged defective connecting rod bushing by and through its Lycoming Authorized Service Center during the effective period of the Agreement rendering the limitations in the Agreement applicable to the claim made for economic damages in the Letter.<sup>18</sup>

The Agreement, which incorporates the Warranty,<sup>19</sup> contains a forum selection clause that jurisdictionally restricts litigious activity to this Court or the United States District Court for the Middle District of Pennsylvania.<sup>20</sup> The Warranty includes the following language:

Your sole remedy for a breach of this warrant or any defect in your replacement part is as provided by this warranty. In no event will Lycoming be liable for any direct, consequential, incidental, exemplary, or special damages, or under any other legal theory, including but not limited to [. . .] costs resulting from required modifications to engine components and assemblies [. . .], damage to the engine or other property (including the aircraft in which the replacement part is installed) [. . .], and commercial losses or lost profits due to loss of use of any aircraft. Lycoming’s total liability for any and all claims related to any replacement part shall in no case exceed the original sales price of the replacement part plus any allowable labor and freight as expressed below.<sup>21</sup>

Likewise, by its written terms, the Warranty applies to defective replacement parts and “commence[s] on either the date the replacement part is first operated or used

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 4 & Ex. C.

<sup>18</sup> *Id.* (emphasis added).

<sup>19</sup> *Id.*, Exhibit A, at B(7).

<sup>20</sup> *Id.*, Ex. A, at E(4). The Court notes that reasonable forum selection clauses are enforced in Pennsylvania. See *Cent. Contracting Co. v. C. E. Youngdahl & Co.*, 209 A.2d 810, 816 (Pa. 1965).

<sup>21</sup> Plaintiff’s Complaint, Ex. B. At re-argument, Christiansen noted that the Warranty bears a date of October 2018. Lycoming Engines agreed to amend its Complaint and affix the older version after this Court ruled on Christiansen’s objections.

for any purpose or twenty-four (24) months *after the replacement part shipped* from Lycoming, whichever occurs first.”<sup>22</sup> Relevant to defective replacement parts, the Warranty states, “Lycoming replacement parts are warranted against defects in material and workmanship for a period of either twelve (12) months or the recommended time in engine hours between overhauls (‘TBO’), whichever occurs first.”<sup>23</sup> The terms of the Warranty also indicate forum selection in this Court or the United States District Court for the Middle District of Pennsylvania.<sup>24</sup>

In the Court’s view, this Court potentially possesses jurisdiction in two scenarios based on the forum selection clause of the Agreement or Warranty. First, under the Agreement, the Court possesses jurisdiction if the replacement bushing was purchased during the term of the Agreement. Second, under the Warranty, the Court potentially possesses jurisdiction if the replacement bushing failed during the Warranty. By its terms, the Warranty began the earlier of the date the part is first operated or within twenty-four (24) months after the part shipped. Plaintiff argues that without knowledge of the serial number of the replacement bushing, it cannot ascertain either the purchase or ship dates of the replacement bushing; hence, why it utilized the phrase “[u]pon information and belief.”

Because the phrase “[u]pon information and belief” is inapposite terminology to confer jurisdiction on this Court,<sup>25</sup> and the Court is unable to determine either date

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<sup>22</sup> *Id.*, Ex. B (emphasis added).

<sup>23</sup> *Id.*, Ex. B.

<sup>24</sup> *Id.*, Ex. B.

<sup>25</sup> See *Beck v. Ashley Distribution Servs., Ltd.*, 2012 WL 604189, at \*1 (W.D. Pa. Feb. 24, 2012) (“Plaintiffs’ vague assertions, made only on information and belief, do not meet the legal standards regarding general personal jurisdiction.”) (citing *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1074 (8th Cir. 2004)).

based on the Complaint, limited discovery is required.<sup>26</sup>

II. Christiansen's Second Preliminary Objection is **OVERRULED**. While Lycoming's request can be phrased as a pursuit to prevent litigation, such phrasing does not preempt the DJA. Indeed, the DJA itself curtails this argument:

Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or *not further relief is or could be claimed*. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.<sup>27</sup>

Preliminarily, Lycoming requests that this Court determine a question of construction related to the rights of the parties presently before this Court. In addition, the Court's determination of the parties' rights will implicitly decide an issue of construction; that is, whether the Agreement's incorporation of the Warranty restricts the Warranty to the Agreement's termination date or suit under the Warranty alone is permitted irrespective of the Agreement's termination date. The plain language of the DJA specifically allows such an inquiry:

Any person interested under a deed, will, *written contract*, or *other writings constituting a contract*, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined *any question of construction or validity* arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder.<sup>28</sup>

Such a request is akin to the construction of an insurance policy and whether

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<sup>26</sup> See Pa.R.C.P. No. 1028(c)(2) ("If an issue of fact is raised, the court shall consider evidence by depositions or otherwise."); see also *Stern v. Prudential Fin., Inc.*, 836 A.2d 953, 955 (Pa. Super. Ct. 2003) ("Once the facts were disputed in conflicting affidavits, Judge Sheppard should have ordered the parties to present additional evidence by depositions, written interrogatories, or other discovery.").

<sup>27</sup> 42 Pa.C.S.A. § 7532 (emphasis added).

<sup>28</sup> 42 Pa.C.S.A. § 7533 (emphasis added).

indemnification is appropriate pursuant to the DJA.<sup>29</sup> Further, Lycoming is seeking the Court to determine a question of fact—whether the Agreement applies in this case. The DJA also expressly allows such an inquiry.<sup>30</sup>

Regarding *Wirerope Works, Inc.*, the Court finds it distinguishable. *Wirerope Works, Inc. and Commonwealth, Department of General Services v. Frank Driscoe Company, Inc.*, on which the former relies, involved requests under the DJA that would provide complete defenses to any potential lawsuits.<sup>31</sup> In the present case, if this Court finds that Christiansen is required to pursue future claims in accordance with the Agreement's or Warranty's forum selection clause, Christiansen is not curtailed from hauling Lycoming into court.

For the reasons discussed above, the Court finds that limited discovery will be permitted in order to aid the Court in ascertaining whether it possesses jurisdiction. The Court directs interrogatories and/or depositions to be conducted limited to the subject matter of the replacement bushing's purchase and ship dates.

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<sup>29</sup> See *QBE Ins. Corp. v. Walters*, 148 A.3d 785, 788 (Pa. Super. Ct. 2016).

<sup>30</sup> 42 Pa.C.S.A. § 7539(a) ("Relief may be granted under this subchapter notwithstanding the fact that the purpose or effect of the proceeding, in whole or in part, is to resolve or determine a question of fact."); accord *Delaware Valley Apartment House Owner's Ass'n v. Com., Dep't of Revenue*, 389 A.2d 234, 238 (Pa. Commw. Ct. 1978) (citing *Liberty Mutual Ins. Co. v. S.G.S. Co.*, 318 A.2d 906, 909 (Pa. 1974)) ("Our Supreme Court has held, however, that the mere existence of a factual question does not divest a court of discretion in permitting a declaratory judgment action and that even if the dispute is wholly a factual one an action is not necessarily precluded."). Importantly, while not properly indicated on Westlaw, Christiansen's reliance on *State Farm Mutual Auto Insurance v. Semple*, 180 A.2d 925, 927 (Pa. 1962), is misplaced as *Semple* has been abrogated related to its statement that the Court should not grant a declaratory judgment if there is a factual dispute. See *Liberty Mut. Ins. Co. v. S. G. S. Co.*, 318 A.2d 906, 910 (Pa. 1974) (Jones, J., concurring) ("I am pleased to see that the Court today discards the other. The existence of a factual question can no longer remove the trial court's discretion to allow a declaratory judgment proceeding.").

<sup>31</sup> *Wirerope Works v. Susquehanna Health System*, No. 14-3089, Opinion & Order: Preliminary Objections 2 (Lyco. Com. Pl. Mar. 31, 2015); *Com., Dep't of Gen. Servs. v. Frank Briscoe Co.*, 466 A.2d 1336, 1340 (Pa. 1983) ("[T]he two counts seeking declaratory relief against all five contractors sought merely to establish that under the contracts the Department bore no liability to any of the defendants for damages for delay, and that the Department was not obliged to be a party to any arbitration proceeding to resolve

The limited discovery must be completed within one-hundred and fifty (150) days of this Opinion's date, or **Friday, January 17, 2020**. Thereafter, Lycoming will have until **Monday, February 17, 2020** to file an amended complaint or, alternatively, notify the Court of the completion of discovery and its inability to plead jurisdiction with specificity.

**IT IS SO ORDERED this 20<sup>th</sup> day of August 2019.**

BY THE COURT,

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Eric R. Linhardt, Judge

cc:

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