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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Progressive Preferred Insurance Company,

No. CV-23-01552-PHX-SMM

10 Plaintiff,

ORDER

11 v.

12 Ford Motor Company, et al.,

13 Defendants.
14

15 Pending before the Court is Defendant Thor Motor Coach, Inc.'s Motion to
16 Dismiss or Transfer Venue. (Doc. 6). For the following reasons, the Motion will be
17 granted in-part and Plaintiff's express and implied warranty claims will be dismissed
18 without prejudice.

19 **I. BACKGROUND**

20 This is a products liability action arising out of the spontaneous combustion of a
21 motor home manufactured by Defendant Thor Motor Coach, Inc. ("Thor"), which
22 contained an engine manufactured by Defendant Ford Motor Co. ("Ford"). (Doc. 1-3 at
23 3). Plaintiff Progressive Preferred Insurance Co. ("Progressive") had issued a policy to
24 Byron and Stephanie Crain ("the Crains") which required Progressive to indemnify the
25 Crains for damage to their 2023 Thor Compass 23TW RV. (Id.) On November 5, 2022,
26 the motor home spontaneously combusted. (Id.) Pursuant to the terms of Progressive's
27 policy with the Crains, Progressive paid out \$147,513.875 for damage sustained by the
28 motor home. (Id.)

1 Progressive filed this suit against Thor and Ford in the Maricopa County Superior
2 Court on July 7, 2023, bringing four causes of action: products liability, negligence,
3 breach of express warranty, and breach of implied warranty. (Doc. 1-3 at 3–5). Ford filed
4 an answer to Progressive’s Complaint on July 27, 2023. (Doc. 1-3 at 22). Thor removed
5 the action on the basis of diversity jurisdiction on August 2, 2023. (Doc. 1). On August
6 11, Thor filed a Motion to Dismiss or Transfer Venue pursuant to 28 U.S.C. § 1404(a),
7 arguing that a Forum Selection Clause contained in the Warranty Agreement the Crains
8 signed requires that Progressive’s claims be brought in the alternative forum of Indiana.
9 (Doc. 6). The Motion has been fully briefed. (Docs. 6, 9, 12). Defendant Ford has not
10 taken a position on the Motion.

11 Thor contends that the Warranty Agreement signed by the Crains when the Crains
12 purchased the subject motor home governs this action and vests exclusive jurisdiction
13 over Progressive’s claims in the courts of Indiana. (Doc. 6 at 3–4). The clause states, in
14 relevant part, as follows:¹

15 [The Crains] understand that exclusive jurisdiction for deciding legal
16 disputes relating to alleged breach of express warranty and implied
17 warranties that arise by operation of law as well as those relating to
18 representations of any nature must be filed in a state or federal court within
19 the state of manufacture, which is Indiana.

20 (Doc. 9 at 4). The Warranty Agreement elsewhere required the Crains to agree that the
21 Crains “understand and agree to the forum selection clause and choice of law clause set
22 forth in the Thor Motor Coach Limited Warranty.” (Doc. 6 at 2). The Warranty
23 Agreement further provides that the Warranty “shall be interpreted and construed in
24 accordance with the laws of the state of Indiana.” (Doc. 9 at 4).

25 II. LEGAL STANDARD

26 Thor brings a motion to dismiss or transfer venue pursuant to § 1404(a) on the

27 ¹ The Court notes a discrepancy in the parties’ recitations of the forum selection clause.
28 Thor’s Motion sets forth the phrasing as “must be filed *in the courts*,” rather than “must
be filed *in a state or federal court*.” (Doc. 6 at 2) (emphasis added). This discrepancy is
minor, however, and does not impact the Court’s analysis.

1 grounds that the forum selection clause requires Progressive’s claims to be brought in
2 Indiana. Section 1404(a) permits a district court to “transfer any civil action to any other
3 district or division where it might have been brought or division to which all parties have
4 consented.” Ordinarily, a court considering a § 1404(a) motion should take into
5 consideration the convenience of the parties as well as other public interest
6 considerations. However, when the parties agree to a valid forum selection clause,
7 enforcement of the clause “protects their legitimate expectations and further vital
8 interests of the justice system.” Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 33 (1988).
9 As such, “[o]nly under extraordinary circumstances unrelated to the convenience of the
10 parties should a § 1404(a) motion be denied.” Atl. Marine Const. Co. v. U.S. Dist. Ct. for
11 W. Dist. of Tex., 571 U.S. 49, 62 (2013).

12 The interpretation and enforcement of forum selection clauses is governed by
13 federal law in diversity actions. Manetti-Farrow, Inc., v. Gucci Am., Inc., 858 F.2d 509,
14 513 (9th Cir.1988). A forum selection clause is “‘prima facie valid and should be
15 enforced unless enforcement is shown by the resisting party to be ‘unreasonable’ under
16 the circumstances.’” Pelleport Inv., Inc. v. Budco Quality Theatres, Inc., 741 F.2d 273,
17 279 (9th Cir. 1984) (quoting M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10
18 (1972)). A forum selection clause may be found unreasonable, and therefore invalid, if
19 “1) The clause was the product of fraud, undue influence or overreaching; 2)
20 Enforcement would deprive a party of his day in court; [or] 3) Enforcement would
21 contravene a strong policy of the forum where the suit was brought.” Rogers v. Wesco
22 Prop., LLC, No. CV 09-08149-PCT-MHM, 2010 WL 3081352, at *7–8 (D. Ariz. Aug. 4,
23 2010) (citing Bremen, 407 U.S. at 12–13, 15, 18).

24 The Court applies federal contract law to interpret the scope of a forum selection
25 clause. Yei A. Sun v. Advanced China Healthcare, Inc., 901 F.3d 1081, 1086 (9th Cir.
26 2018). When applying federal contract law, the Court considers first to the plain language
27 of the contract. See Doe 1 v. AOL LLC, 552 F.3d 1077, 1081 (9th Cir. 2009) (“When we
28 interpret a contract under federal law, we look for guidance ‘to general principles for

1 interpreting contracts.”) (overruled on other grounds). Accordingly, words will be given
2 their common or normal meanings unless particular circumstances dictate a different
3 conclusion. Hunt Wesson Foods., Inc. v. Supreme Oil Co., 817 F.2d 75, 77 (9th Cir.
4 1987).

5 **III. DISCUSSION**

6 The parties dispute whether the forum selection clause in the Warranty Agreement
7 mandates that Progressive’s tort claims be brought in Indiana. Thor argues that the clause
8 encompasses both contract and tort claims, creating exclusive jurisdiction over those
9 claims in Indiana. (Doc. 12 at 1–3). Progressive concedes the application of the clause to
10 Progressive’s express and implied warranty claims but argues that the broad
11 interpretation Thor seeks this Court to adopt would render the clause invalid. (Doc. 9 at
12 7–8). Progressive asks that the Court dismiss the express and implied warranty claims but
13 retain jurisdiction over the tort claims. (Id. at 2–3). The Court dismisses Progressive’s
14 warranty claims and finds that Progressive’s tort claims are outside of the scope of the
15 forum selection clause; thus, this Court’s jurisdiction over those claims is proper.

16 The relevant part of the forum selection clause for this portion of the analysis
17 provides that “legal disputes relating to alleged breach of express warranty and breach of
18 implied warranties . . . as well as those relating to representations of any nature” must be
19 filed in Indiana. (Doc. 9 at 4). The warranty’s choice of law clause provides that Indiana
20 law applies to any and all causes of action “arising out of or relating to” the Warranty
21 Agreement. (Id.) The Warranty Agreement additionally states that “this limited warranty
22 shall be interpreted and construed in accordance with the laws of the State of Indiana.”
23 (Id.)

24 Because the Warranty Agreement’s forum selection clause identifies specific
25 causes of action, general contract interpretation principles do not suffice to resolve the
26 issue at hand. The Court thus looks to Indiana law as per the Warranty Agreement’s
27 interpretation clause. Indiana law makes clear that the claims identified in the forum
28 selection clause can only be brought in contract. In some states, breach of express or

1 implied warranty claims, as well as misrepresentation claims, may be brought as tort
2 claims or as contract claims. In Indiana, however, the field of products liability is
3 governed by statute. The Indiana Product Liability Act (IPLA) “governs all actions that
4 are: (1) brought by a user or consumer; (2) against a manufacturer or seller; and (3) for
5 physical harm caused by a product.” Ind. Code § 34-20-1-1. Warranty and
6 misrepresentation claims brought under a tort theory are subsumed by the IPLA. See
7 Palm v. Taurus Int’l Mfg., Inc., No. 3:22-CV-337 DRL-MGG, 2022 WL 17714600, at *4
8 (N.D. Ind. Dec. 15, 2022); see also Bayer Corp. v. Leach, 153 N.E.3d 1168, 1178 (Ind.
9 Ct. App. 2020). Accordingly, breach of express or implied warranty claims and
10 misrepresentation claims can only be maintained under contract theories in Indiana.

11 Thor argues that Progressive’s tort claims “arise from or relate to” the contract
12 claims identified in the forum selection clause because the contract and tort claims
13 require analyzing whether Thor breached its warranties. (Doc. 12 at 3). Thor frames the
14 analysis as whether resolution of the tort claims relates to contract interpretation. (Id. at
15 2). Thor cites Manetti-Farrow for this proposition, in which the Ninth Circuit reasoned
16 that “[w]hether a forum selection clause applies to tort claims depends on whether
17 resolution of the claims relates to interpretation of the contract.” 858 F.2d at 514. The
18 Court found that the tort claims in that case could not “be adjudicated without analyzing
19 whether the parties were in compliance with the contract,” and so the claims fell within
20 the scope of the forum selection clause Id.

21 If the Court were to apply this analytical framework, the Court would find
22 Progressive’s tort claims to be outside the scope of the forum selection clause because
23 those tort claims do not require interpretation of the Warranty Agreement. In Indiana,
24 Products liability tort claims must be brought under the Indiana Products Liability Act,
25 which requires no finding of privity between the parties. See Ind. Code § 34-20-2-2(2)
26 (claims apply although “the user or consumer has not bought the product from or entered
27 into any contractual relation with the seller.”). In short, although a product defect is a
28 necessary finding for the tort claims, a contract between the parties is not.

1 However, the Ninth Circuit in Manetti-Farrow construed a forum selection clause
2 which is distinct in several respects from the clause now before the Court. The clause in
3 Manetti-Farrow created exclusive jurisdiction in another country over “any controversy
4 regarding interpretation or fulfillment of the present contract.” 858 F.2d at 511. By
5 contrast, the Warranty Agreement’s forum selection clause includes claims which “relate
6 to” the enumerated claims. The Ninth Circuit has held that, where a clause instead uses
7 the language that the dispute must “relate to” the agreement between the parties, “[t]he
8 dispute need not grow out of the contract or require interpretation of the contract in order
9 to relate to the contract.” Yei A. Sun, 901 F.3d at 1086. Instead, the court found that the
10 phrase “relating to” encompassed “any dispute that has some logical or causal connection
11 to the parties’ agreement.” Id.

12 The matter is further complicated by the fact that the forum selection clause in the
13 Warranty Agreement identifies specific claims, and thus only creates exclusive
14 jurisdiction in Indiana over legal disputes relating to those claims. Whereas the forum
15 selection clauses considered in cases such as Yei A. Sun applied to disputes relating to
16 the contract as a whole, the forum selection clause in Thor’s Warranty Agreement applies
17 only to disputes relating to breach of warranties and representations. Compare Yei A.
18 Sun, 901 F.3d at 1085, with Doc. 9 at 4.

19 Accordingly, the proper analysis is whether Progressive’s tort claims have “some
20 logical or causal connection to” the enumerated claims in the forum selection clause. See
21 901 F.3d at 1086.

22 In the context of a qui tam action brought by a relator against the relator’s
23 employer, the Ninth Circuit found that an arbitration clause contained in the relator’s
24 employment contract did not apply because the False Claims Act claims did not “relate
25 to” the relator’s employment. See United States ex rel. Welch v. My Left Foot Children’s
26 Therapy, LLC, 871 F.3d 791, 799 (9th Cir. 2017). The clause provided, in part, that “[t]o
27 the extent permitted by applicable law, the arbitration procedures stated below shall
28 constitute the sole and exclusive method for the resolution of any claim between the

1 Company and Employee arising out of ‘or related to’ the employment relationship.” Id. at
2 798. The defendant in My Left Foot moved to compel arbitration on the basis of the
3 employment agreement. Id. at 795. The Ninth Circuit held that the clause was not binding
4 on the relator’s claims, finding that the FCA suit had “no direct connection with [the
5 relator’s] employment because even if [the relator] ‘had never been employed by
6 defendants, assuming other conditions were met, she would still be able to bring a suit
7 against them.’” Id. (quoting Mikes v. Strauss, 889 F. Supp. 746, 754 (S.D.N.Y. 1995)).
8 The court found that the defendants “could have engaged in the same fraudulent conduct
9 absent any relationship with [the relator],” and so it was the defendants’ acts, rather than
10 the relator’s employment, which gave rise to the FCA claims. Id.

11 Although My Left Foot involved an arbitration clause, the Court finds the Ninth
12 Circuit’s opinion to be instructive. As discussed above, Progressive’s products liability
13 and tort claims are subsumed by the IPLA, which does not require privity between the
14 manufacturer or seller and the party claiming damages. See Ind. Code § 34-20-2-2.
15 Progressive could bring the tort claims in the absence of any agreement between Thor
16 and the Crains; thus, it is Thor’s actions, rather than the Warranty Agreement, which
17 gives rise to Progressive’s products liability claims. The Warranty Agreement bears no
18 “logical or causal connection” to Progressive’s products liability tort claims. See Yei A.
19 Sun, 901 F.3d at 1086. Accordingly, the Court finds that Progressive’s tort claims do not
20 relate to the Warranty Agreement or the contract claims listed therein.

21 **IV. CONCLUSION**

22 The Court finds that Progressive’s express and implied warranty claims against
23 Thor must be brought in Indiana and dismisses those claims without prejudice.
24 Progressive is entitled to re-raise those claims against Thor in Indiana pursuant to the
25 Warranty Agreement’s forum selection clause. Progressive’s tort claims against Thor,
26 however, are outside the scope of the forum selection clause and so those claims may be
27 maintained in this Court.

28 Accordingly,

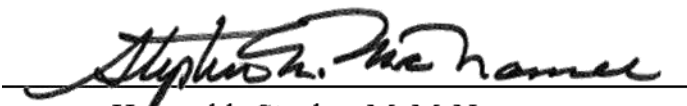
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IT IS ORDERED granting in-part and denying in-part Defendant Thor's Motion to Dismiss or Transfer Venue. (Doc. 6).

IT IS FURTHER ORDERED dismissing without prejudice Plaintiff's express and implied warranty claims against Thor.

IT IS FURTHER ORDERED denying Defendant Thor's Motion to Dismiss as to Plaintiff's tort claims.

Dated this 22nd day of January, 2024.



Honorable Stephen M. McNamee
Senior United States District Judge