

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRIUMPH AEROSTRUCTURES, LLC,	§	
	§	
Plaintiff/Counter-Defendant,	§	
	§	
V.	§	No. 3:14-cv-2329-L
	§	
COMAU, INC.,	§	
	§	
Defendant/Counter-Plaintiff.	§	

**REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE
(LETTERS ROGATORY)**

The United States District Court for the Northern District of Texas (the “Court”) presents its compliments to the Quebec Superior Court, and requests international judicial assistance to obtain evidence to be used in a civil proceeding before this Court in the above-captioned matter (the “Texas Proceeding”). At present, a trial on this matter will occur sometime in August of 2016 or thereafter in Dallas, Texas.

The assistance requested is an order for the issuance of a subpoena *duces tecum* addressed to Mr. Daniel Desjardins, Senior Vice-President, General Counsel and Corporate Secretary of Bombardier Inc. (the “Order”), a company carrying on business in Québec with its registered head office located at 800 René-Lévesque Blvd. West, Montreal, Québec, Canada, H3B 1Y8 (“Bombardier”). In the event that the Québec Superior Court considers it appropriate, it may identify a Bombardier representative equivalent to Mr. Desjardins, with knowledge of the facts in question and access to the documents in issue.

This Court is satisfied that the evidence sought is relevant to the claims and defenses in the Texas Proceeding. The evidence sought would normally be subject to subpoena by the Defendant pursuant to Rule 45 of the Federal Rules of Civil Procedure, but a subpoena so issued is not

effective in Canada. Accordingly, the evidence may only be obtained through the intervention of the Québec Superior Court, of Québec, Canada and this Court is persuaded that such intervention is in the interest of justice.

1. Sender and Requesting Judicial Authority of the Requesting State, the United States of America:

Honorable David L. Horan
United States Magistrate Judge
United States District Court for the Northern District of Texas, Dallas Division
1100 Commerce Street
Room 1549
Dallas, Texas 75242-1003
USA
Tel. 1-214-753-2400

2. Relevant Authority of the Receiving State:

Clerk of the Court
Québec Superior Court
1 Notre Dame Street East
Montréal (Québec) H2Y 1B6
Tel.: +1 (514) 393-2721
Fax.: +1 (514) 873-4760

3. Person to Whom the Executed Request is to be Returned, and Deadline for Return:

The executed request should be returned to the Sender and Requesting Judicial Authority of the Requesting State, the United States of America, as identified above in Section 1, as expeditiously as possible.

4. Names and Addresses of the Parties and Their Representatives:

a. Plaintiff/Counter-Defendant:

Triumph Aerostructures, LLC
899 Cassatt Road
Suite 210
Berwyn, PA 19312
USA
Tel. 1-610-251-1000

Plaintiff/Counter-Defendant's Representatives:

Lisa S. Gallerano, Esq.
Lacy M. Lawrence, Esq.
Patrick G. O'Brien, Esq.
Richard M. Cella, Esq.
Akin Gump Strauss Hauer & Feld LLP
1700 Pacific Avenue
Suite 4100
Dallas, Texas 75201-4675
USA
Tel. 1-214-969-2800
Fax 1-214-696-4343
Email: lgallerano@akingump.com
llawrence@akingump.com
pobrien@akingump.com
rcella@akingump.com

b. Defendant/Counter-Plaintiff:

Comau LLC, formerly known as Comau, Inc.
21000 Telegraph Road
Southfield, Michigan 48033
USA
Tel. 1-248-353-8888

c. Defendant/Counter-Plaintiff's Representatives in the United States:

John E. Benko, Esq.
Timothy J. Lowe, Esq.
Donald V. Orlandoni, Esq.
McDonald Hopkins, PLC
39533 Woodward Avenue
Suite 318
Bloomfield Hills, Michigan 48304
USA
Tel. 1-248 646-5070
Fax 1-248-646-5075
Email: jbenko@mcdonaldhopkins.com
tlowe@mcdonaldhopkins.com
dorlandoni@mcdonaldhopkins.com

Bryan J. Wick, Esq.
J. Sean Lemoine, Esq.
Wick Phillips Gould & Martin LLP
3131 McKinney Avenue
Suite 100

Dallas, Texas 75204
USA
Tel. 1-214-692-6200
Fax 1-214-692-6255
Email: bryan.wick@wickphillips.com
sean.lemoine@wickphillips.com

d. Defendant/Counter-Plaintiff's Counsel in Quebec:

Me Mathieu Piché-Messier
Me Daniel Grodinsky

Borden Ladner Gervais
1000 De La Gauchetière Street West
Suite 900
Montréal, Québec, Canada
H3B 5H4
Tel.: (514) 954-3136
Fax: (514) 954-1905
Email: mpmessier@blg.com
dgrodinsky@blg.com

5. Nature and Purpose of the Proceedings and Summary of the Case:

The Texas Proceeding is a breach of contract action involving a dispute over a contract for tooling and automation equipment for use in manufacturing airplane wings for a new line of global business jets. Plaintiff/Counter-Defendant Triumph Aerostructures, LLC (“Triumph”) contracted with its customer, non-party Bombardier Inc., to manufacture airplane wings for the new Bombardier Global 7000/8000 business jets (the “Aircraft”). Comau, Inc., now known as Comau LLC (“Comau”), contracted with Triumph in October 2011 to provide the process tooling and automation for the wing assembly line, and to integrate the tooling and automation into Triumph’s facility in Texas (the “Contract” for the “Project”). Contemporaneously, Comau contracted with Global Tooling Systems, Inc. (“GTS”) to manufacture and provide to Comau certain tooling required by Triumph to manufacture the airplane wings for Bombardier (the “Subcontract”).

Comau and GTS worked on the design and manufacture of the equipment at their respective facilities in southeast Michigan. Their and Triumph’s intent was to later install the

equipment at Triumph's facility in Red Oak, Texas, where Triumph would build the airplane wings for Bombardier. On at least one occasion, Bombardier representatives traveled to Michigan to observe the progress being made by Comau and GTS.

The following issues and topics are in dispute and/or are relevant to this request:

- a. whether Comau met its obligations under the Contract as factory integrator, manager of the Project, and supplier/developer of automation and tooling;
- b. whether the parties met their deadlines under the Project schedules and otherwise pursuant to the Contract;
- c. the reasons for Triumph's inability to provide Comau timely with the engineering, design, and Project data necessary for Comau to develop the automation and tooling at issue;
- d. Bombardier's understanding of the status of the automated driller(s) to be supplied by Comau;
- e. whether Comau was entitled to additional compensation from Triumph for myriad Project delays, additional work beyond the scope of the Contract, and additional costs caused by other circumstances;
- f. whether Comau fulfilled its metrology obligations to Triumph by providing Triumph with a comprehensive metrology plan; and
- g. whether any and all Project delays were caused by circumstances other than Comau's performance, including, but not limited to, Federal Aviation Administration ("FAA") requirements.

6. Judicial Action to Be Taken and Documentary Evidence To Be Obtained:

This Court respectfully requests that the Quebec Superior Court issue a subpoena *duces tecum* addressed to Mr. Daniel Desjardins, representative of Bombardier, or in the event that the Québec Superior Court considers it appropriate, an equivalent Bombardier representative with knowledge of the facts in question and access to the documents in issue, as soon as is reasonably practicable, for, *inter alia*, the production of the following documents within Bombardier's possession, custody, or control:

- a. All email and other communications referring or addressed to any aspect of Comau's performance on the Project, with the exception of any such emails or communications exchanged directly with Triumph.
- b. All email and other communications referring or addressed to the timing, schedule, or deadline for any work to be performed on the Project, including all Project schedules, documents showing intermediate and final Project deadlines, and any such deadline extensions, with the exception of any such emails or communications exchanged directly with Triumph.
- c. All email and other communications referring or addressed to the release(s) of design and engineering data from Bombardier to Triumph in relation to the Project, including, without limitation, the timing and composition of each such release, with the exception of any such emails or communications exchanged directly with Triumph.
- d. All email and other communications referring or addressed to the status of any Driller that Comau was to supply to Triumph, with the exception of any such emails or communications exchanged directly with Triumph. The term "Driller" means any of the Numerical Control Production Drills that were to be utilized to manufacture Aircraft wings at the Project site.
- e. All communications and other documents referring or addressed to any and all commercial or other claims submitted to Bombardier by Triumph, including, without limitation, any and all requests for additional compensation due to a delay or other circumstance, with the exception of any such communications or documents exchanged directly with Triumph.
- f. All communications and other documents referring or addressed to metrology in relation to the Project, with the exception of any such communications or documents exchanged directly with Triumph.

Please note that Comau does not seek production from Bombardier of any emails or other documents that Bombardier received from Triumph, or that Triumph sent to Bombardier.

It is requested that Bombardier be ordered to produce the foregoing documents and property for inspection, and copying to:

Me Mathieu Piché-Messier
Me Daniel Grodinsky
Borden Ladner Gervais
1000 De La Gauchetière Street West
Suite 900
Montréal, Québec, Canada
H3B 5H4
Tel.: (514) 954-3136

Fax.: (514) 954-1905

E-mail: mpmessier@blg.com
dgrodinsky@blg.com

7. Relevance of These Requests:

As the designer, director of manufacturing efforts, and seller for the Aircraft, Bombardier has documents containing critical case information that neither Triumph nor Comau possesses. The date range for the requested documents is January 1, 2011 to present. Set forth below is a summary of the basis for each category of requested documents.

- a. All email and other communications referring or addressed to any aspect of Comau's performance on the Project, with the exception of any such emails or communications exchanged directly with Triumph.**

Comau seeks documents to disprove Triumph's claim that Comau failed to perform as project manager, project integrator, developer of the required automation and tooling, and otherwise as required under the Contract. Comau seeks documents from Bombardier that neither Triumph nor Comau possesses that relate to Comau's performance on the Project.

- b. All email and other communications referring or addressed to the timing, schedule, or deadline for any work to be performed on the Project, including all Project schedules, documents showing intermediate and final Project deadlines, and any such deadline extensions, with the exception of any such emails or communications exchanged directly with Triumph.**

Comau seeks documents to disprove Triumph's claim that Comau caused Project delays and to establish that Triumph was the cause of such delays. Comau seeks documents from Bombardier that neither Triumph nor Comau possesses that relate to the reasons for, and extent of, any timing and schedule changes, and any deadline extensions, on the Project.

- c. All email and other communications referring or addressed to the release(s) of design and engineering data from Bombardier to Triumph in relation to the Project, including, without limitation, the timing and composition of each such release, with the exception of any such emails or communications exchanged directly with Triumph.**

Comau seeks documents to show that Triumph failed to meet its contractual obligation to provide Comau timely with engineering and design data in what Comau asserts to be the proper format and at the limited intervals required under the Contract. Comau seeks documents from Bombardier that neither Triumph nor Comau possesses.

- d. All email and other communications referring or addressed to the status of any Driller that Comau was to supply to Triumph, with the exception of any such emails or communications exchanged directly with Triumph.**

Comau seeks documents to disprove Triumph's claim that Comau lacked the ability to design and construct the automated Drillers pursuant to the Contract. Comau seeks documents from Bombardier that neither Triumph nor Comau possesses.

- e. All communications and other documents referring or addressed to any and all commercial or other claims submitted to Bombardier by Triumph, including, without limitation, any and all requests for additional compensation due to a delay or other circumstance, with the exception of any such communications or documents exchanged directly with Triumph.**

Comau seeks documents to disprove the claim that Triumph suffered damages caused by Project delays and other developments on the Project. Comau seeks documents from Bombardier that neither Triumph nor Comau possesses that show the extent to which Triumph sought or received compensation from Bombardier for any such developments. Comau further seeks such documents to support its allegations that Triumph wrongfully denied Comau additional compensation for certain Project delays, additional work beyond the scope of the Contract, and additional costs caused by other circumstances.

- f. All communications and other documents referring or addressed to metrology in relation to the Project, with the exception of any such communications or documents exchanged directly with Triumph.**

The parties dispute the scope of Comau's obligation under the Contract with respect to the development of a metrology plan and the installation of metrology equipment. Comau seeks documents from Bombardier that neither Triumph nor Comau possesses that shed light on this issue.

In view of the foregoing, this Court requests, in the interests of justice, that an order be issued, in accordance with the laws and procedures of the courts of Canada, compelling Bombardier to produce the specific documents identified above in Section 6.

8. Request for Notification of Time and Place for the Execution of the Request and Address of Any Person to Be Notified:

Me Mathieu Piché-Messier
Me Daniel Grodinsky
Borden Ladner Gervais
1000 De La Gauchetière Street West
Suite 900
Montréal, Québec, Canada

H3B 5H4
Tel.: (514) 954-3136
Fax.: (514) 954-1905
E-mail: mpmessier@blg.com
dgrodinsky@blg.com

Donald V. Orlandoni, Esq.
McDonald Hopkins, PLC
39533 Woodward Avenue
Suite 318
Bloomfield Hills, Michigan 48304
USA
Tel. 1-248 646-5070
Fax 1-248-646-5075
Email: dorlandoni@mcdonaldhopkins.com

9. Specification of Privilege or Duty to Refuse to Give Evidence under the Law of the State of Origin:

Under the laws of the United States, a party has a privilege to refuse to give evidence if the evidence discloses a confidential communication between that party and an attorney for that party that was made for the purpose of obtaining legal advice. Parties also enjoy limited privileges on other grounds not relevant here such as communications between physician and patient, psychotherapist and patient, husband and wife, or clergy and penitent. United States law also recognizes a privilege against criminal self-incrimination, which is likely not applicable here. Outside of the strict area of privilege, certain limited immunities are available that may place restrictions on the giving of evidence, such as the limited protection of documents created as the work product of attorneys during or in anticipation of litigation.

10. The Reasonable Fees and Costs Incurred in Responding to This Request Will Be Borne by:

Comau LLC
21000 Telegraph Road
Southfield, Michigan 48033
USA
Tel. 1-248-353-8888

11. Reciprocity:

The United States District Court for the Northern District of Texas expresses its appreciation to the Quebec Superior Court of Québec, Canada for its courtesy and assistance in this matter and states that it shall be ready and willing to assist the courts of Quebec in a similar manner when so requested.

12. Signature and Seal of Requesting Authority:

Dated: _____

Honorable David L. Horan
United States Magistrate Judge
United States District Court for the Northern
District of Texas

SEAL OF COURT:

Submitted by:

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