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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

<p>OLYMPIC AIR, INC. and CATLIN INSURANCE COMPANY, INC.</p> <p>Plaintiffs,</p> <p>v.</p> <p>HELICOPTER TECHNOLOGY COMPANY, et al.,</p> <p>Defendants.</p> <hr/> <p>WILLIAM G. REED and MARY E. REED,</p> <p>Plaintiffs,</p> <p>v.</p> <p>HELICOPTER TECHNOLOGY COMPANY, et al.</p> <p>Defendants.</p>	<p>Case No. 2:17-CV-1257-RSL</p> <p>ORDER GRANTING DEFENDANT MD HELICOPTER, INC.’S MOTION TO DISMISS AMENDED CONSOLIDATED COMPLAINT</p>
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This matter comes before the Court on defendant MD Helicopter, Inc.’s (“MDHI”) motion to dismiss plaintiffs’ First Amended Consolidated Complaint. Dkt. #47.

BACKGROUND

On July 22, 2014, plaintiff William G. Reed was piloting an MDHI Model (originally a “Hughes Model”) 369D helicopter (“the Helicopter”), Registration No. N5225C, near Oso, Washington in the scope of his employment with Olympic Air, Inc. Dkt. #47 at ¶¶ 4.1, 5.1. The

1 Helicopter has five rotor blades. *Id.* at ¶ 4.1. Plaintiffs allege that one of the blades, Part No.
2 500P2100-105, Serial No. SN091B, failed and caused a crash. *Id.* at ¶¶ 4.1–4.2. The blade was
3 manufactured by defendant Helicopter Technology Company (“HTC”) and sold by defendant
4 HTC in October 2012 as one of a set of five blades to Olympic Air. *Id.* at ¶¶ 3.1, 4.1. Post-crash
5 inspection revealed that the blade had disbonded at the root fitting, and that a second blade was
6 in the process of failing at the time that it fractured. *Id.* at ¶ 4.2; *see* Ex. B, Dkt. #48 at 10–19.
7 The pilot had carried out inspections prior to the flight but had looked primarily at the root
8 fitting and the metal. The need to inspect the bond line for cracks was not clear to him until after
9 the accident, when new service advisories were issued to that effect. Ex. B, Dkt. #48 at 19.

10 Defendant MDHI is a corporation organized and existing under the laws of the State of
11 Arizona, with its principal place of business in Mesa, Arizona. *Id.* at ¶ 3.2. Plaintiffs brought
12 action against MDHI pursuant to the common law of negligence and the Washington Product
13 Liability Act, *see* RCW 7.72.010 *et seq.* Their claims are based on HTC’s reliance on the rotor
14 blade designs promulgated by MDHI and MDHI’s creation and distribution of service
15 instructions, bulletins and other advisories that failed to provide adequate warning to users of
16 signs of imminent failure of the rotor blades.¹ Dkt. #45 at ¶ 8.4. MDHI filed a motion to dismiss
17 under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. Dkt. #47.

18 DISCUSSION

19 **A. Legal Standard**

20 Plaintiffs must prove that the Court has personal jurisdiction over MDHI. *Harris Rutsky*
21 *& Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128–29 (9th Cir. 2003) (citing *Doe*,

22
23
24 ¹ Plaintiffs also state that the main rotor blades for the Helicopter were manufactured by HTC,
25 “supplied and sold directly to [MDHI] by [HTC], and subsequently sold by MDHI as MDHI produced
26 parts.” Dkt. #45 at ¶ 8.4. As per counsel for Olympic Air’s clarification at oral argument on May 22,
27 2019, the Court assumes this to be a reference to MDHI’s status as the Type Certificate Holder and legal
28 manufacturer of the Helicopter. *Id.* at ¶ 8.3, *see* Dkt. #54; *see* Dkt. #31 (Cousins Decl.) at ¶¶ 17–18
 (“Olympic [Air] ... reassembled the aircraft using MDHI manufactured parts, as well as main rotor
 blades manufactured and sold by [HTC].”). HTC manufactured the rotor blade.

1 I v. Unocal Corp., 248 F.3d 915, 922 (9th Cir. 2001) (per curiam)). Where there is no applicable
2 federal statute governing personal jurisdiction, the district court applies the law of the state in
3 which the district court sits. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th
4 Cir. 2004) (citing Fed. R. Civ. P. 4(k)(1)(A)). As Washington’s long-arm statute is co-extensive
5 with the outer limits of due process, the Court need only ensure that the constitutional
6 requirements for personal jurisdiction are met. Cognigen Networks, Inc. v. Cognigen Corp., 174
7 F. Supp. 2d 1134, 1137 (W.D. Wash. 2001) (citing Chan v. Society Expeditions, Inc., 39 F.3d
8 1398, 1404–05 (9th Cir. 1994)).

9 Due process requires that MDHI have “certain minimum contacts with [the forum] such
10 that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial
11 justice.’” Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement, 326
12 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Plaintiffs contend
13 that MDHI is subject to this Court’s specific personal jurisdiction. Dkt. #45 at ¶¶ 6.1–6.3. The
14 Ninth Circuit employs a three-part test to determine whether there is specific personal
15 jurisdiction. First, the non-resident defendant must purposefully direct its activities or
16 consummate some transaction with the forum or a resident of the forum, or perform some act by
17 which it purposefully avails itself of the privilege of conducting activities in the forum, thereby
18 invoking the benefits and protections of its laws. Second, the claim must be one that arises out
19 of or relates to the defendant’s forum-related activities. Third, the exercise of jurisdiction must
20 comport with fair play and substantial justice; i.e., it must be reasonable. Picot v. Weston, 780
21 F.3d 1206, 1211 (9th Cir. 2015) (citing Schwarzenegger, 374 F.3d at 802). As this is a claim
22 sounding in tort, we apply a “purposeful direction” test and look to evidence that MDHI directed
23 its activities at the State of Washington, even if those actions took place elsewhere. Id. (citing
24 Schwarzenegger, 374 F.3d at 802–03).

25
26 Plaintiffs have the burden of proving the first two prongs. Id. (citing CollegeSource, Inc.
27 v. AcademyOne, Inc., 653 F.3d 1066, 1076 (9th Cir. 2011)). If they do so, the burden shifts to
28

1 MDHI to set forth a compelling case that the exercise of jurisdiction would not be reasonable.
2 Id. at 1212 (citing CollegeSource, 653 F.3d at 1076).

3 **B. MDHI’s Minimum Contacts with the State of Washington**

4 Plaintiffs argue that MDHI purposefully directed its activities at the State of Washington
5 in several ways, and that their claims arise out of these forum-related activities. The Court
6 considers each rationale in turn.

7
8 1. Legal Manufacturer of the Helicopter

9 MDHI’s legal predecessor, Hughes Helicopters, manufactured the Helicopter in 1979.
10 Dkt. #45 at ¶ 6.3; Dkt. #12 (Black Decl.) at ¶ 9. Hughes Helicopters was sold to McDonald
11 Douglas in 1984. McDonald Douglas merged with Boeing in 1997. In 1999, the civilian line of
12 Hughes Helicopters was sold to MD Helicopters Holdings, Inc. In 2005, Patriarch Partners, LLC
13 purchased the civilian Hughes product line and recapitalized the company as MDHI. Dkt. #50 at
14 5–6; Dkt. #32 (Kovarik Decl.) at ¶ 4. Plaintiffs allege that MDHI and its predecessor companies
15 have had a business relationship with Olympic Air since 1980. Dkt. #24 at ¶ 6.3; Dkt. #31 at ¶ 6.

16 MDHI is the Type Certificate Holder for the 369D aircraft. Id. at ¶ 3; Dkt. #45 at ¶ 6.3.
17 As the Type Certificate Holder, MDHI is required to publish safety bulletins and produce
18 manuals. It also has the right to produce and sell the product line covered by the Type
19 Certificate. Dkt. #47 at 6. It is required to warn owners and operators of any safety issues, to
20 maintain the airworthiness of its products, and to investigate and notify the Federal Aviation
21 Authority (“FAA”) of any issue involving flight safety. Dkt. #32 at ¶ 19. Plaintiffs argue that
22 MDHI is therefore legally deemed to be the manufacturer of the helicopter. It has successor
23 liability for the product line and the actions of its predecessor corporations are imputed to it for
24 the purposes of jurisdiction. Dkt. #45 at ¶ 6.3.

25
26 MDHI argues that being a Type Certificate Holder is “geographically agnostic” and
27 “jurisdictionally irrelevant.” Dkt. #47 at 7. That status cannot create a substantial connection
28 between a non-resident company and a state because a Type Certificate Holder cannot issue a

1 service bulletin to certain operators to the exclusion of others. Id. MDHI also points out that
2 aviation-related defendants who are Type Certificate Holders have prevailed on motions to
3 dismiss for lack of personal jurisdiction. See for e.g. Katz v. Spiniello Companies, 244 F. Supp.
4 3d 237, 256 (D. Mass. 2017).

5 The Court agrees. Plaintiffs cite to cases that establish that a Type Certificate Holder can
6 be considered a manufacturer under the General Aviation Revitalization Act of 1994, but these
7 do not have implications for the question of personal jurisdiction. See Burton v. Twin
8 Commander Aircraft LLC, 171 Wn. 2d 204 (2011). MDHI was formed in 2005 when Patriarch
9 Partners purchased the Hughes 369D product line from RDM Holdings, Inc. Dkt. #50 at 5.
10 “Washington follows the general rule that ‘a corporation purchasing the assets of another
11 corporation does not become liable for the debts and liabilities of the selling corporation.’”
12 Columbia State Bank v. Invicta Law Grp. PLLC, 199 Wn. App. 306, 319 (2017) (quoting
13 Cambridge Townhomes, LLC v. Pac. Star Roofing, Inc., 166 Wn.2d 475, 481–82 (2009)).
14 Furthermore, to establish personal jurisdiction, plaintiffs’ claim must arise out of or relate to
15 MDHI’s forum-related activities. Picot, 780 F.3d at 1211 (citing Schwarzenegger, 374 F.3d at
16 802). Plaintiffs’ cause of action arises out of an alleged defect in one of the main rotor blades of
17 the helicopter, manufactured by HTC and sold to Olympic Air in October 2012. Dkt. #45 at ¶
18 4.1. Plaintiffs’ allegations concerning the manufacture of the Helicopter by MDHI’s
19 predecessors are irrelevant. Plaintiffs’ stream of commerce argument is similarly inapplicable.
20 Dkt. #50 at 3, 16, 23; see J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873 (2011).

21 2. Design of Rotor Blades for Helicopter

22 Plaintiffs argue that HTC manufactures the blades for the Model 369D and 500
23 helicopters with MDHI’s approval and pursuant to an MDHI design. Dkt. #45 at ¶ 6.3. MDHI
24 refutes this, stating that the design and manufacture of the original Hughes 369D in 1979 cannot
25 be a source of liability “both because MDHI is the wrong party (the party would be Boeing) and
26 also because of the General Aviation Revitalization Act of 1994’s 18-year statute of repose.”
27 Dkt. #47 at 8–9; see Lyon v. Agusta S.P.A., 252 F.3d 1078, 1084 (9th Cir. 2001), as amended

1 (July 9, 2001). The Court agrees. Furthermore, plaintiffs do not show a connection between any
2 designs made by MDHI and the State of Washington. Picot, 780 F.3d at 1211. This cannot be a
3 basis for personal jurisdiction.

4 3. Processing of Warranty Claims

5
6 Plaintiffs argue that MDHI processes warranty claims for customers in Washington,
7 either directly or through their distributors and service centers. Dkt. #45 at ¶ 6.3. A tab on
8 MDHI's website indicates that warranty claims can be processed through MDHI's service
9 centers. Dkt. #32 at ¶ 6; see Ex. H, Dkt. #32-1 at 41–43. However, plaintiffs' claim does not
10 arise out of MDHI's processing of any warranty claims. Picot, 780 F.3d at 1211 (9th Cir. 2015)
11 (citing Schwarzenegger, 374 F.3d at 802).

12 4. Selling of Products and Replacement Parts in Washington

13
14 Plaintiffs argue that MDHI has purposefully availed itself of the privilege of doing
15 business in the State of Washington by selling products and replacement parts in the forum,
16 directly and through distributors. Dkt. #45 at ¶ 6.3. At the time of the accident, MDHI
17 maintained two authorized dealers and service centers in the State of Washington, Cascade
18 Airframe Repair, Inc. (now Cascade Helicopter Services) and Northwest Helicopters. Dkt. #32
19 at ¶ 8. Out of 684 Model 369D helicopters worldwide, 26 are listed as being based in
20 Washington; i.e., just under 5%. Id. at ¶ 5. Plaintiffs also specifically allege that Olympic Air
21 has purchased a substantial number of MDHI factory parts since 1980. Id. Between 2002 and
22 2013, while operating three MDHI helicopters, Olympic Air purchased approximately \$400,000
23 worth of MDHI-manufactured parts annually. Dkt. #31 at ¶ 8. These were predominantly
24 purchased from Heli-Mart, Inc., a factory authorized distributor of MDHI parts located in
25 California. Id.; see Dkt. #50 at 9–10. Olympic Air purchased the airframe of the Helicopter from
26 Cascade Airframe and rebuilt it using MDHI factory parts in 2002. Dkt. #48 (Bingham Decl.) at
27 ¶ 8. It has used Cascade Airframe's services since 1982. Dkt. #31 at ¶ 16.

1 However, plaintiffs have conceded that the rotor blade of the Helicopter was
2 manufactured by HTC and sold by HTC to Olympic Air in October 2012. Dkt. #45 at ¶ 4.1.
3 Their claim does not arise out of MDHI’s sale of products and replacement parts in the State of
4 Washington. Nor does it pertain to the airframe sold to Olympic Air by Cascade Airframe, even
5 assuming specific personal jurisdiction might be established over MDHI based upon the actions
6 of Cascade Airframe as its “agent.” See Dkt. #47 at 8; see Williams v. Yamaha Motor Co., 851
7 F.3d 1015, 1024 (9th Cir. 2017) (finding that the appellants failed to make out a prima facie case
8 for an agency relationship, assuming that “some standard of agency continues to be relevant to
9 the exercise of *specific* jurisdiction”) (quoting Daimler AG v. Bauman, 571 U.S. 117, 135 n.13
10 (2014)) These allegations are irrelevant to whether the Court has specific personal jurisdiction
11 over MDHI. Picot, 780 F.3d at 1211 (citing Schwarzenegger, 374 F.3d at 802).

12 5. Selling of Manuals and Service Bulletins to Olympic

13
14 Plaintiffs allege that MDHI issued “instructions, guidelines, warnings, cautions and
15 service information concerning the use of the subject model helicopter, and component parts
16 thereof, including the subject main rotor blade.” Dkt. #45 at ¶ 8.2. They argue that Olympic Air
17 has since 1980 maintained, serviced, inspected and operated its MDHI helicopters pursuant to
18 the manuals and service bulletins sold directly by MDHI or its predecessors. Dkt. #31 at ¶ 7.
19 The Helicopter itself has been serviced in Washington since at least 1988. Dkt. #48 at ¶ 8. The
20 manuals were always sent by MDHI to Olympic Air in Shelton, Washington. Id. When MDHI
21 became the owner of the Hughes Helicopter product line and its Type Certificate Holder,
22 Olympic Air purchased a multi-volume printed set of MDHI manuals from MDHI for
23 approximately \$800 to \$900. These volumes were periodically updated and reissued by MDHI
24 at a supplemental charge to Olympic Air. Id. at ¶ 9; see Ex. A, Dkt. #31-1 at 1–5. About 6 or 7
25 years ago, MDHI replaced its printed maintenance manuals with manuals on MDHI’s website.²

26 ² Apart from the availability of manuals and service bulletins online, plaintiffs argue that the
27 MDHI’s interactive website subjects it to personal jurisdiction in Washington. Dkt. #45 at ¶ 6.3; Dkt.
28 #50 at 19–20; see Cybersell, Inc. v. Cybersell, Inc., 130 F.3d 414, 418 (9th Cir. 1997). For example, the
website advertises two service centers located in Washington, Cascade Helicopter Services and
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1 Access was restricted to those customers, like Olympic Air, who were able to show ownership
2 of an MDHI helicopter since July 31, 2017. Id. at ¶¶ 10–11; Dkt. #50 at 10. Olympic Air paid an
3 annual fee for this access, but also continues to use the printed volumes. Id.; Dkt. #50 at 10.
4 These provide “guidelines, instructions, cautions, service, maintenance and inspection
5 procedures for the MDHI 369D helicopter in general, and more specifically for the subject
6 model rotor blade that failed, causing the crash at issue in the subject litigation.” Id. Olympic
7 Air relied on the manuals for servicing the Helicopter’s rotor blades. Id. at ¶ 12.

8 MDHI also sold a Service Bulletin Package to Olympic Air that contained a complete set
9 of all Service Bulletins issued through February 5, 2010. Id. at ¶ 13. Olympic Air regularly
10 referred to this package while servicing and maintaining the Helicopter, including the allegedly
11 defective rotor blade. Id.; see Ex. B, Dkt. #31-1 at 6–8. The service letters and service bulletins
12 were routinely mailed by MDHI to Olympic Air. After the accident, MDHI mailed Olympic Air
13 a letter supplementing previously published main rotor blade inspection procedures with
14 illustrative photographs. Id. at ¶ 14; see Ex. C, Dkt. #31-1 at 9–13. Furthermore, every six
15 months, an MDHI service technician contacted Olympic Air to verify that Olympic Air still
16 owned and operated the MDHI helicopters and to inquire about their hours of operation and
17 their serial numbers. Id. at ¶ 15.

18 MDHI argues that plaintiff William Reed has conceded that he did not rely on the
19 manuals issued by MDHI and did not comply with the Service Bulletins. Dkt. #47 at 10; see Ex.
20 B, Dkt. #48 at 16. Whether the materials were actually consulted is not relevant to whether the
21 fact that MDHI sold and sent them to Olympic Air in Washington is sufficient to confer personal
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25 Northwest Helicopters. Dkt. #32 at ¶ 8; see Ex. C, Dkt. #32-1 at 22–25; Ex. J, Dkt. #32-1 at 50–51. It
26 directs prospective customers to use a “Contact Form” to contact service centers. The Form includes a
27 “State” fillable field that allows customers to fill in “Washington.” Id. at ¶¶ 9, 15; see Ex. A, Dkt. #32-1
28 at 10. Customers can also register accounts for managing all aspects of owning and operating an MDHI
helicopter. Id. at ¶ 12. However, plaintiffs’ claims vis-à-vis MDHI arise out of MDHI’s manuals and
service bulletins. They do not concern the functionality of the website or any actions taken by MDHI’s
service centers.

1 jurisdiction upon MDHI. However, MDHI also argues that it was obligated as a Type Certificate
2 Holder to make the manuals and instructions available to owners and operators in order to
3 comply with mandatory airworthiness standards. Dkt. #47 at 10; see 14 CFR § 21.50(b). This
4 would have been true irrespective of where Olympic Air was located. Id. It reiterates that it is
5 unaware of any case in which a court has exercised personal jurisdiction on the basis of the non-
6 resident defendant being a Type Certificate Holder. Id. at 10–11.

7 MDHI cites to the Tenth Circuit’s decision in Old Republic Ins. Co. v. Cont’l Motors,
8 Inc. In Old Republic, an airplane manufactured by an out-of-state defendant, Continental
9 Motors, Inc., crashed in Idaho on a flight from Colorado. The airplane’s insurer filed an action
10 against Continental Motors in Colorado, alleging that its online service manuals and bulletins
11 contained defective information that caused the crash. Those manuals and bulletins were
12 accessed and consulted by Colorado-based Arapahoe Aero, a fixed-based operator (“FBO”), in
13 servicing the airplane. 877 F.3d 895, 900 (10th Cir. 2017). The district court dismissed the case
14 for lack of personal jurisdiction. The Tenth Circuit affirmed. It held that Old Republic did not
15 allege that Continental Motors “specifically sought out Arapahoe Aero’s business or engaged in
16 any direct communications with it.” Id. at 912. FAA regulations required that it make its service
17 manuals available to certified repair stations and FBOs wherever they were located. Id. at 917.
18 Nothing about its webpage or its service manuals appeared to be deliberately targeted at
19 Colorado, in terms of content or its intended audience. Id. MDHI argues that it, too, was merely
20 complying with its obligations as a Type Certificate Holder. Dkt. #47 at 11–12.

21 The Court agrees. MDHI did not “purposefully avail[] itself of the privilege of
22 conducting activities in the forum” or direct its activities at the State of Washington. Picot, 780
23 F.3d at 1211. It sent manuals and service bulletins to Washington because Olympic Air was in
24 Washington. As defense counsel pointed out at oral argument, had Olympic Air been located
25 elsewhere, the materials would have been sent elsewhere. “The inquiry whether a forum State
26 may assert specific jurisdiction over a nonresident defendant focuses on the relationship among
27 the defendant, the forum, and the litigation.” Walden v. Fiore, 571 U.S. 277, 283–84 (2014)
28

1 (quoting Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 775 (1984)). “The relationship must
2 arise out of contacts that the ‘defendant *himself*’ creates with the forum State.” Id. (quoting
3 Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)) (emphasis in original). The Court
4 must reject “attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by
5 demonstrating contacts between the plaintiff (or third parties) and the forum State.” Id. (citing
6 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 417 (1984)). Furthermore, the
7 analysis looks to the “defendant’s contacts with the forum State itself, not the defendant’s
8 contacts with persons who reside there.” Id. (citing Int’l Shoe Co., 326 U.S. at 319).

9 MDHI’s only contact with Washington is that it sent materials to Olympic Air in
10 Washington that it was federally required to send to all operators of its aircraft. The “plaintiff
11 cannot be the only link between the defendant and the forum. Rather, it is the defendant’s
12 conduct that must form the necessary connection with the forum State that is the basis for its
13 jurisdiction over him.” Walden, 571 U.S. at 285–86 (citing Burger King, 471 U.S. at 478). The
14 Court cannot “rely on a defendant’s ‘random, fortuitous, or attenuated contacts’ or on the
15 ‘unilateral activity’ of a plaintiff.” Id. (citing Burger King, 471 U.S. at 475).

16 Plaintiff has not proven the first two prongs of specific personal jurisdiction. Picot, 780
17 F.3d at 1211. The Court need not reach the question of whether the exercise of jurisdiction
18 would be reasonable. See Menken v. Emm, 503 F.3d 1050, 1058 (9th Cir. 2007) (citing CE
19 Distribution, LLC v. New Sensor Corp., 380 F.3d 1107, 1112 (9th Cir. 2004)).

20 CONCLUSION

21 For all the foregoing reasons, MDHI’s motion to dismiss is GRANTED.

22 DATED this 29th day of May, 2019.

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27 Robert S. Lasnik
28 United States District Judge