IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MENARD, INC.,

Plaintiff,

v.

TEXTRON AVIATION, INC., DALLAS AIRMOTIVE, INC., and PRATT & WHITNEY CANADA INTERNATIONAL, INC.,

Defendants.

OPINION AND ORDER

18-cv-844-wmc

Plaintiff Menard, Inc., alleges negligence against defendants Textron Aviation, Inc., Dallas Airmotive, Inc. ("DAI") and Pratt & Whitney Canada International, Inc. ("P&WC"), stemming from the overhaul of three airplane engines manufactured by P&WC. P&WC has overhauled some of the subject engines, while DAI has overhauled them all. DAI and P&WC have moved to dismiss based on lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).[1] (Dkt. ##4, 22.) For the reasons that follow, the court will deny both motions because Menard has established a *prima facie* case of personal jurisdiction as to both defendants.

ALLEGATIONS OF FACT[2]

This dispute arises from an attempted sale of two aircraft -- a 2003 and a 2006 Cessna plane -- by Menard to a third party. Each plane contains two PW 530A engines

[1] DAI also moved to dismiss for improper venue under Federal Rule of Civil Procedure 12(b)(3), but withdrew that motion in its reply brief. (DAI's Reply (dkt. #14) 2.)

[2] The following facts are based on the complaint and affidavits submitted by the parties. *See Nelson v. Park Indus., Inc.*, 717 F.2d 1120, 1123 (7th Cir. 1983) (holding a court may rely on the allegations of the complaint and affidavits submitted by the parties in a personal jurisdiction analysis).

manufactured by P&WC. Upon a presale inspection, Menard discovered defects with the diffuser bolts in the engines, making the aircrafts unsuitable to sell.

The engines in dispute were manufactured by P&WC and sold to defendant Textron in Canada, where P&WC is incorporated and has its principal place of business. Textron assembled the engines into Cessna planes and sold them to Menard. Wisconsin residents Eric Gates and Carl Rockel -- alleged by Menard to be P&WC employees -- have serviced these engines for Menard for several years.[3] Including the subject aircrafts sold by Textron to Menard, there are 274 registered aircrafts in Wisconsin containing P&WC engines.

P&WC requires overhauls of their engines every 4,000 miles, including inspecting and repairing engines and, if necessary, replacing component parts. Menard's 2003 Cessna engines were overhauled in 2008 by P&WC and in 2013 by DAI.[4] Menard's 2006 Cessna engines were overhauled once in 2011 by DAI.

DAI's overhauls in 2011 and 2013 were both subcontracted by Textron's Wisconsin office on behalf of Menard. DAI sent estimates for each overhaul to Menard. Textron employees removed the engines from Menard's aircraft before the overhauls and reinstalled the engines on behalf of DAI afterward. The overhauls were completed in Texas, where

[3] P&WC disputes Menard's claim and alleges Pratt and Whitney *Engine Services*, a distinct legal entity from P&WC, have employed Gates and Rockel. (Blondeau Decl. (dkt. #26) ¶¶ 5–6.) The court takes up this dispute below.

[4] The complaint alleged all three overhauls were completed by DAI through Textron. (Compl. (dkt. #1-1) ¶ 20.) In its response to the motion to dismiss, Menard now represents that the 2008 overhaul was completed by P&WC and the 2011 and 2013 overhauls were completed by DAI through Textron. (Hanson Aff. (dkt. #12) ¶ 4.) Whether P&WC completed the first overhaul does not materially change this personal jurisdiction analysis.

DAI is incorporated with its principal place of business. During the overhauls, DAI leased short-term replacement engines to Menard in Wisconsin. After the engine overhauls were completed, DAI sent the engines back to Menard's facility in Wisconsin. Since Textron subcontracted the overhaul, Textron paid DAI for the work.

OPINION

On a motion to dismiss for lack of personal jurisdiction, the plaintiff has the burden to show a *prima facie* case of personal jurisdiction. *Felland v. Clifton*, 682 F.3d 665, 672 (7th Cir. 2012). The court must accept all well-pleaded facts as true and must resolve factual disputes in favor of the plaintiff. *Purdue Research Found. v. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003). Federal personal jurisdiction is established where the defendant is amenable to suit under the state law where the federal court sits (usually under a long-arm statute) and where jurisdiction is within constitutional due process limits under the 'minimum contacts' test. *KM Enters., Inc. v. Global Traffic Technologies, Inc.*, 725 F.3d 718, 723 (7th Cir. 2013).

I. Wisconsin Long-Arm Statute

Pursuant to Wisconsin's long-arm statute, Wis. Stat. § 801.05, Wisconsin may exercise personal jurisdiction over a defendant for any act or omission outside of the state that results in an injury in the state where:

> (a) Solicitation or service activities were carried on within the state by or on behalf of the defendant; or
> (b) Products materials or other things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

Wis. Stat. § 801.05(4)(a)-(b).

Menard's takes the position that its injury occurred in Wisconsin when the pre-sale inspection showed its planes were unsuitable to sell. While one could view the alleged injury as occurring in the place where the engines were overhauled, other product defect lawsuits view the injury as having occurred in Wisconsin though caused by a foreign act. *See, e.g.*, *Nelson by Carson v. Park Indus., Inc.*, 717 F.2d 1120, 1123 (7th Cir. 1983) (holding that Wis. Stat. § 801.05(4) covered claim against Hong Kong manufacturer and distributor of flannel shirt which ignited when it came in contact with cigarette lighter flame, causing severe personal injuries to minor); *Kopke v. A. Hartrodt S.R.L.*, 2001 WI 99, ¶ 9, 245 Wis. 2d 396, 410, 629 N.W.2d 662 (finding that Wis. Stat. § 801.05(4) covered claim against Italian loading business based on injury when pallet loaded with paper out of cargo container in Wisconsin); *Hasley v. Black, Sivalls & Bryson, Inc.*, 70 Wis. 2d 562, 579, 235 N.W.2d 446, 455 (1975) (relying on prior version of § 801.05(4) for personal jurisdiction over claim involving local injury aused by malfunction of a "bull plug" that was manufactured in Texas).

As to DAI, Textron employees removed and then reinstalled Menard's engines on behalf of DAI before and after the overhauls, and DAI itself bid for the overhaul work through Textron's Wisconsin location. Therefore, Textron carried out service activities within Wisconsin on behalf of DAI, and DAI itself solicited work in Wisconsin, each establishing personal jurisdiction under Wis. Stat. § 801.05(4)(a). As to P&WC, the plentiful aircraft in Wisconsin containing P&WC engines show that P&WC's products were used within this state in the ordinary course of trade, establishing personal jurisdiction

under Wis. Stat. § 801.05(4)(b).

Moreover, the language of this long-arm statute is to be interpreted to go to the lengths of due process. *Felland*, 682 F.3d at 678. Therefore, so long as jurisdiction over both DAI and P&WC comports with the requirements of constitutional due process under the 'minimum contacts' analysis, DAI and P&WC are presumed to fall within Wisconsin's long-arm statute. *See id.* ("Once the requirements of due process are met, there is little need to conduct an independent analysis under the specific terms of the long-arm statute"). As such, the court will focus on the constitutional requirements.

II. Constitutional Due Process

The Fourteenth Amendment's Due Process clause recognizes two types of personal jurisdiction: general and specific. *Daimler AG v. Bauman*, 571 U.S. 117, 126–127 (2014). General personal jurisdiction applies where a corporation has its principal place of business or is incorporated in the forum state. *Id.* at 137. Alternatively, general jurisdiction can apply where a corporation's contact with the state is so continuous and systematic to render it "at home" in the forum state. *Id.* at 122. Here, as defendants allege, and Menard does not dispute, general jurisdiction does *not* exist over DAI or P&WC because each are incorporated and headquartered outside of Wisconsin, and neither have continuous and systematic activity to render them "at home" in Wisconsin.

On the other hand, specific jurisdiction may be established where a defendant's contacts with a forum state are not continuous or systematic but arise out of the cause of action. *Tamburo v. Dworkin*, 601 F.3d 693, 702 (7th Cir. 2010). This type of jurisdiction is generally established where a defendant's forum conduct gives rise to reasonable

anticipation of being haled into court in that forum. *Hyatt Intern. Corp. v. Coco*, 302 F.3d 707, 716 (7th Cir. 2002). The Seventh Circuit has established that specific jurisdiction exists where (1) the defendant purposefully avails itself of the privilege of doing business in the forum state, (2) the injury arises out of the defendant's forum-related activities and (3) exercising jurisdiction does not offend traditional notions of fair play and substantial justice. *Felland*, 682 F.3d at 673.

A. Specific Jurisdiction as to DAI

1. Relevant DAI-Wisconsin Contacts

As DAI suggests, a specific jurisdiction analysis may only consider those contacts out of which the claim arises or relates. *See uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 429 (7th Cir. 2010); *RAR, Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1277 (7th Cir. 1997) (holding a court cannot aggregate defendant's contacts with a state to create constitutionally-required minimum contacts for specific jurisdiction). The nexus between a defendant's forum contact and a cause of action ensures defendants have control over the jurisdictional consequences of their actions. *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F.Supp.2d 1154, 1164 (W.D. Wis. 2004).[5] Still, the court may consider not only those contacts between the defendant and forum state, but also those contacts between the defendant and plaintiff in the forum state. *Tamburo*, 601 F.2d at 705.

[5] While some circuits have adopted familiar tort concepts of but-for causation or proximate cause to connect a defendant's forum contacts to a claim, the Seventh Circuit has refused to adopt but-for causation as too inclusive and proximate cause as too exclusive of claims under a personal jurisdiction analysis. *uBID*, 623 F.3d at 430.

While DAI analyzes the relation between its Wisconsin contacts and the subject engines (*see* DAI's Br. (dkt. #4) 10), the relevant inquiry is whether *the alleged negligent overhauls* arise from or relate to DAI's Wisconsin contacts. In this way, material DAI-Wisconsin contacts out of which the alleged negligent overhaul claims arise or relate include: (1) DAI's bid on the overhaul work through Textron's Wisconsin location, (2) DAI's overhaul estimates to Menard, and (3) DAI's engine rentals to Menard during the overhauls. (Hanson Aff. (dkt. #12) ¶ 4.) While DAI states the Textron bids were solicited by Textron (or Menard through Textron) and not DAI, the negligence claim here nonetheless directly arises from the contact between DAI's and Textron's Wisconsin office. DAI also argues that the rental engines are not the basis for Menard's claims and thus irrelevant. However, the relevant DAI-Wisconsin contacts are those out of which the negligence claim arises *or relates*, and DAI's rental of engines to Menard during DAI's overhaul of Menard's engines does relate to the allegation of negligent overhauls against DAI.

2. Purposeful Availment

The purposeful availment requirement examines whether a defendant's forum contacts convey economic benefits and protections of a forum state's laws, establishing quid pro quo the burdens of litigating a claim in that forum. *Tamburo*, 601 F.3d at 702. DAI's asserted requirement to establish a "substantial connection" between itself and Wisconsin follows this reasoning as well. *See Hy Cite Corp.,* 297 F. Supp. 2d at 1163 (establishing a substantial connection exists if the defendant "purposefully avails itself of the privilege of conducting activities" in the forum).

DAI contends that it does not have "substantial business" in Wisconsin because "if DAI overhauled and sold a bad engine, it did so from Texas." (DAI's Br. (dkt. #4) 10.) However, DAI again narrows the focus of this analysis to *only* the subject engines, even though the entirety of the overhaul transaction relates to the claims against it. In particular, DAI bid on these overhauls through a Textron location in Wisconsin, sent estimates to Menard in Wisconsin, and returned the engines back to Wisconsin after the work was completed. These contacts show that DAI directed activities in or toward Wisconsin.

The contacts also undermine DAI's argument that any of its Wisconsin contacts were only due to Menard or Textron's actions. Under the guide of the *Tamburo* court tradeoff, DAI's conduct toward Wisconsin induced the monetary benefit of the overhaul work *and* the protection of Wisconsin laws, establishing a quid pro quo to litigate in Wisconsin should claims arise from these contacts. In other words, DAI's contacts with Wisconsin fulfill the purposeful availment requirement.

3. Traditional Notions of Fair Play and Substantial Justice

Once purposeful availment arising out of the defendant's forum-related activities has been established, the defendant must present a "compelling case" that personal jurisdiction would offend traditional notions of fair play and substantial justice. *Felland*, 682 F.3d at 677. The factors relevant to this inquiry include

> "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in

furthering fundamental substantive social policies."

Id. (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)) (internal quotation marks omitted).

Certainly, the burden on DAI to litigate in Wisconsin is a primary concern. *Madison Consulting Grp. v. State of S.C.*, 752 F.2d 1193, 1204 (7th Cir. 1985) (citing *World-Wide Volkswagen Corp. v. Woodso*n, 444 U.S. 286, 292 (1980)). This factor inquires whether a defendant's burden would be greater than routinely tolerated by nonresidents subject to specific jurisdiction. *Felland*, 682 F.3d at 677. While nonresident defendants always face some burden litigating out of state, hardships routinely tolerated by nonresident defendants alone do not establish that jurisdiction would be unduly burdensome on a defendant. *Id.* DAI asserts it would be burdened to litigate in Wisconsin because its managers and employees would have to travel to Wisconsin to defend suit. Since the burden of DAI to have employees travel to Wisconsin is a hardship routinely tolerated by nonresident defendants, DAI has not established it is *unduly* burdened to litigate in Wisconsin.

DAI also asserts (far less persuasively) that Wisconsin does not have a meaningful interest in adjudicating this dispute because Texas law may apply to liability or damages. (DAI's Br. (dkt. #4) 11.) First, Wisconsin does have an interest in adjudicating disputes where a Wisconsin resident seeks redress for tortious injury in Wisconsin inflicted by out-of-state actors. *See Felland*, 682 F.3d at 677; *Tamburo*, 601 F.3d at 709. Second, DAI's argument seems to focus more on the interstate judicial system's interest in adjudicating the claim. To be fair, should another state's law apply to liability or damages, the interstate

judicial system's interest *may* lean toward adjudicating the dispute in that forum. *Adden v. Middlebrooks*, 688 F.2d 1147, 1160 (7th Cir. 1982). However, this factor, is outweighed by DAI's failure to demonstrate undue burden by litigating in Wisconsin and Wisconsin's interest in adjudicating the dispute.

As such, while the interstate judicial system's interest may slightly weigh against the reasonableness of jurisdiction here, DAI has not presented a "compelling case" that jurisdiction would offend traditional notions of fair play and substantial justice. Because the requirements of constitutional due process and Wisconsin's long-arm statute have been satisfied, this court may exercise personal jurisdiction over DAI.

B. Specific Jurisdiction as to P&WC

1. Relevant P&WC-Wisconsin Contacts

Keeping in mind the case law described above, P&WC-Wisconsin contacts that relate to the claims of negligence and give notice to P&WC that it could be subject to suit in Wisconsin include: (1) P&WC's engines in 274 registered aircrafts located in Wisconsin and (2) P&WC's alleged Wisconsin-resident employees Carl Rockel and Eric Gates. (Compl. (dkt. #1-1) ¶ 9; Hanson Aff. (dkt. #24) ¶ 8.) P&WC argues that only the three subject engines are relevant to this dispute, not the entire quantity of P&WC engines in Wisconsin. However, as the number increases, P&WC is given clearer notice that the presence of their engines in Wisconsin may subject them to suit here, as does the state's interest in monitoring DAI's processes in the state. In this way, the quantity of P&WC engines in Wisconsin is relevant.

2. Purposeful Availment

The stream of commerce theory of specific jurisdiction is also relevant to whether the P&WC engines in Wisconsin constitute purposeful availment. While the Supreme Court has not yet agreed on the correct understanding of the stream of commerce theory, the Seventh Circuit has utilized Justice Brennan's more permissive test to determine issues of specific jurisdiction. *See Jennings v. AC Hydraulic A/S*, 383 F.2d 546, 550 (7th Cir. 2004); *Dehmlow v. Austin Fireworks,* 963 F.2d 941, 947 (7th Cir. 1992).[6] Under this test, purposeful availment is established by a "regular and anticipated flow" of goods into the stream of commerce of the forum state. *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 117 (1987) (Brennan, J. concurring in the judgment). The Supreme Court's most recent discussion of the stream of commerce did not resolve this split, but *added* that a stream of commerce theory requires at least awareness that a product might end up in the forum state in particular. *Matlin v. Spin Master Corp.*, 921 F.3d 701, 706 (7th Cir. 2019) (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 890–891 (2011)).

In light of the Seventh Circuit's embrace of the more permissive standard, this court will apply it in determining whether P&WC has established a regular and anticipated flow of engines specifically into Wisconsin. While stream of commerce is not defined by

[6] The *Jennings* court acknowledged the Supreme Court's stream of commerce split and applied the more permissive standard; however, the court added that since the more permissive standard would not establish a stream of commerce, applying either theory would end in the same result. 393 F.3d at 550 n.2. The *Dehmlow* court applied the more permissive standard to uphold personal jurisdiction where a defendant sold a firework to an out-of-forum consumer with knowledge that its fireworks would eventually reach the forum state; but, the court added that the defendant's conduct established a stream of commerce under either standard. 963 F.2d at 947.

quantity, courts have often declined to find a stream of commerce where very few of a defendant's products have entered the forum state's market.[7] Here, in contrast, the *274* aircrafts containing one or more P&WC engines in Wisconsin comfortably establish a regular, known and easily anticipated flow of P&WC engines specifically into Wisconsin.

P&WC would instead apply Justice O'Connor's stream of commerce test from *Asahi* that requires a defendant's active *placement* of goods into the stream of commerce to show an *intent* to serve the market of the forum state. 480 U.S. at 108 (plurality opinion). Under this test, the existence of registered aircrafts with P&WC engines in Wisconsin alone may not be enough to establish a stream of commerce. However, as indicated above, the existence of hundreds of registered aircrafts with P&WC engines in Wisconsin is not P&WC's only contacts with Wisconsin.

Even under the more exacting standard, channels of communication from a defendant to consumers in the forum state establishes the necessary intent to serve the forum market. *Id.* at 112 (plurality opinion). Here, plaintiff points to contacts involving Wisconsin residents Eric Gates and Carl Rockel as P&WC representatives. While P&WC disputes whether these individuals are its *employees* (as opposed to that of a related corporation), for purposes of this personal jurisdiction challenge, the court must accept as true Menard's allegation that Rockel and Gates are employed by P&WC.[8] As alleged, the

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[7] *See J. McIntyre*, 564 U.S. at 886 (holding four of defendant's machines in New Jersey does not establish a regular flow of product into New Jersey); *Morgan v. Trokamed GmbH*, 941 F. Supp. 2d 953, 959 (W.D. Wis. 2018) (holding two of defendant's products in Wisconsin does not establish a stream of commerce).

[8] P&WC is correct in asserting that if Carl Rockel and Eric Gates were established as employees of Pratt and Whitney Engine Services ("PWES"), their actions would not necessarily have the same

employment of Wisconsin residents creates channels of communication by P&WC to Wisconsin consumers, establishing an intent to serve Wisconsin's market. Therefore, the 274 registered aircrafts with P&WC engines in Wisconsin, along with alleged P&WC employees Rockel and Gates, are enough to establish that P&WC has purposefully availed itself of the privilege of conducting business in Wisconsin under either stream of commerce interpretation.

3. Traditional Notions of Fair Play and Substantial Justice

Finally, this court must consider whether subjecting P&WC to jurisdiction in Wisconsin offends traditional notions of fair play and substantial justice. Because it has purposefully availed itself of the privilege of doing business in Wisconsin, as described above, P&WC must make a "compelling case" why jurisdiction would be unreasonable. *Burger King*, 471 U.S. at 477. Recall further that the burden is on the defendant to prove the factors relating to reasonableness of jurisdiction, including the forum state's interest, the plaintiff's interest in adjudicating the dispute, the judicial system's interest, and the several states interest in furthering fundamental social policies. *Felland*, 682 F.3d at 677.

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jurisdictional consequences on P&WC. *Insolia v. Phillip Morris Inc.*, 31 F. Supp. 2d 660, 669 (W.D. Wis. 1998). However, the court must resolve factual disputes in favor of the plaintiff. *Purdue*, 338 F.3d at 782. This standard requires that once the defendant has submitted evidence in opposition to the exercise of jurisdiction, the plaintiff must provide affirmative evidence to support jurisdiction. *Id.* at 782–783. Here, the record contains both a declaration by P&WC alleging Rockel and Gates work for PWES (Blondeau Decl. (dkt. #26) ¶¶ 5-6) *and* exhibits by Menard raising a reasonable inference that Rockel and Gates work for P&WC (Hanson Aff. (dkt. #24); *id.*. Exs. 1, 2 (dkt. ##24-1, 24-2)). Therefore, for purposes of the pending motions at least, the court must accept Menard's allegations as true. Even if this is in error, such evidence is not required to demonstrate purposeful availment under the more permissive standard, which appears to be the one embraced by the Seventh Circuit.

P&WC's argument rests on the burden of litigating in a foreign forum, which is the first and primary concern of this inquiry. *Id.* As P&WC suggests, special attention should be given to P&WC's location outside the United States. *See Asahi*, 480 U.S. at 115 ("[G]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field"). However, minimum contacts with a forum state can "justify the serious burdens placed on the alien defendant." *Mid-America Tablewares, Inc. v. Mogi Trading Co., Ltd.*, 100 F.3d 1353, 1362 (7th Cir. 1996) (quoting *Asahi*, 480 U.S. at 114).

Not only are P&WC's contacts with Wisconsin far from negligible, as P&WC claims, its claim of the burden imposed to litigate in Wisconsin is diminished by fairly extensive contacts established through placing its engines into the Wisconsin market. In other words, P&WC has not presented a "compelling case" to show that the exercise of jurisdiction by this court would offend traditional notions of fair play and substantial justice. Thus, this court may exercise personal jurisdiction over P&WC because the requirements of constitutional due process have been met and it falls within Wisconsin's long-arm statute.

One final note: on September 6, 2019, defendant DAI, Inc. filed counterclaims for tortious interference with contractual relationships and defamation (dkt. #41), but without seeking leave to assert these counterclaims as required by Federal Rule of Civil Procedure 13(e). As such, the court will strike DAI's filing.

While DAI is free to file a motion for leave to assert these counterclaims, the court notes that in light of the procedural posture of this case, with summary judgment due

November 1, 2019, it faces an uphill battle in making the requisite showing. *See Harbor Ins. Co. v. Cont'l Bank Corp.*, 922 F.2d 357, 360-61 (7th Cir. 1990) ("The reason that permission is required is that the course of the litigation may be unduly disrupted if new claims are belatedly injected; in that case permission will be denied and the defendant can bring his claim as an independent lawsuit.").

ORDER

IT IS ORDERED that:

1) Defendants Dallas Automotive Inc.'s and Pratt & Whitney Canada International, Inc.'s motions to dismiss for lack of personal jurisdiction (dkt. ##4, 22) are DENIED.

2) Defendants Dallas Automotive Inc.'s counterclaims (dkt. #41) are STRUCK.

Entered this 24th day of October, 2019.

BY THE COURT:

/s/

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WILLIAM M. CONLEY
District Judge