IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

ALBERT D. EIGEN, Executor of the Estates of Martin Eigen and Joan Eigen, Deceased, and ALBERT D. EIGEN, Administrator of the Estate of Mollie H. Eigen, Deceased v. TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, a Division of AVCO CORPORATION, TEXTRON, INC., AVCO CORPORATION, FLIGHTWAYS OF LONG ISLAND, INC. d/b/a MILLION AIR FARMINGDALE, AIRCRAFT RENTALS, INC., EXECUTIVE AIR SUPPORT, INC. d/b/a TEXAS AIR SUPPORT, INC., PRECISION AIRMOTIVE CORPORATION, ZENITH FUEL SYSTEMS, INC., PRECISION AEROSPACE CORPORATION, PUROLATOR PRODUCTS COMPANY (formerly Facet Enterprises, Inc.), FACET AEROSPACE PRODUCTS COMPANY, FACET FUEL SYSTEMS, INC., FACET ENTERPRISES, INC., MARVEL SCHEBLER, a Division of BORG-WARNER CORPORATION, EATON CORPORATION	COURT OF COMMON PLEAS PHILADELPHIA COUNTY Control # 012169 MAY TERM, 2001 NO. 003079

MEMORANDUM OPINION AND ORDER

After reviewing the parties' joint Stipulation of Facts and Stipulated Order, as well as the discovery record on remand, the Court hereby issues the following as its Memorandum Opinion and Order on remand from the Superior Court.

Factual and Procedure Overview

1. This case is pending on remand from the Superior Court.

2. At issue are matters relating to a settlement transaction between Precision Airmotive Corporation ("Precision"), an airplane component part overhauler/manufacturer, and the estates of Martin Eigen, Joan Eigen and Mollie Eigen (sometimes collectively, the "estates").

3. The underlying dispute between the parties, the settlement of which gives rise to the instant dispute on remand, arose out of the May 28, 1999 crash in Vermont of a Piper Warrior PA-28-161 aircraft ("Accident Aircraft") piloted at the time of the crash by Martin Eigen. The Accident Aircraft was rented by Martin Eigen. While the Accident Aircraft was rented, there is another aircraft of relevance to this dispute.

4. Martin Eigen held a joint ownership interest with Martin Schanback in a corporation known as Martin Aviation Corporation. Martin Aviation Corporation owned an aircraft described as a 1977 Beech Duke 66 FAA Id. No. N711CE (the "Beech Duke"). The Beech Duke was insured under a policy of insurance issued on behalf of United States Aircraft Insurance Group ("USAIG") by its underwriter United States Aviation Underwriters, Inc. ("USAU") (hereinafter the "USAU Beech Duke Policy" or "Beech Duke Policy").[1]

5. Martin Eigen rented the Accident Aircraft for the trip to Vermont, because the Beech Duke was temporarily out of service and in the shop for servicing and repairs.

6. As a result of the crash of the Accident Aircraft, all persons aboard the aircraft at the time of the crash ultimately perished, namely, the pilot, Martin Eigen, and his two passengers, his wife Joan Eigen, and his mother, Mollie Eigen.

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[1] USAIG and USAU shall hereinafter be referred to collectively as "USAU."

7. Albert Eigen, the brother of Martin Eigen, was the personal representative of the estates of each of the decedents: he was the executor of the estates of the pilot Martin Eigen and the passenger Joan Eigen and the administrator of the estate of the passenger Mollie Eigen.

8. Albert Eigen, represented by Arthur Wolk and the Wolk Law Firm, and acting on behalf of each of the three decedent estates, sued a number of defendants as a result of the crash, alleging that their conduct had caused the accident. Neither of the passenger estates made any claim in the litigation at its outset, or any time thereafter prior to settlement, against the estate of the pilot. Arthur Wolk and the Wolk Law Firm were not authorized to make any such claim, and were directed by the Eigen family not to pursue any claim against their deceased brother/father prior to the date of settlement.

9. The defendants remaining in the case at the time of the commencement of trial on January 5, 2004 included: (a) Precision, the overhauler and alleged manufacturer of the Accident Aircraft's carburetor; (b) Textron Lycoming Reciprocating Engine Division and related companies ("Textron"), manufacturer of the engine of the Accident Aircraft; and (c) Flightways of Long Island, Inc. and related companies ("Flightways"), the owner, maintainer and renter of the Accident Aircraft.

10. Precision and Flightways had asserted claims against the Estate of Martin Eigen pursuant to Pa. R. Civ. P. 2252(d) seeking contribution or indemnification from the Estate of Martin Eigen on a theory that pilot error had caused or contributed to the accident.[2] The Estate

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[2] The Superior Court referred to this filing as a counterclaim, *see* 874 A.2d at 1182; it was filed pursuant to Pa. R. Civ. P. 2252(d) and not Pa. R. Civ. P. 1031.

of Martin Eigen denied liability on these claims and denied that pilot error had caused or contributed to the accident.

11. Trial began on January 5, 2004 before the Honorable Mary D. Colins. On Monday, January 26, 2004, before trial was complete, and before Precision had presented its case, all parties separately negotiated and entered into settlement agreements with the estates on a joint tortfeasor basis. The jury was then dismissed by the Court after the settlement was put on the record. The total settlement figure was $4,333,333. Of that amount, Precision agreed to pay $1,333,333 and Textron agreed to pay $1,000,000. Flightways agreed to pay the balance of $2,000,000.

12. Precision did not tender the $1,333,333 settlement amount to Eigen.

13. On February 27, 2004, Eigen filed a Petition to Enforce Settlement against Precision ("Petition to Enforce Settlement Against Precision"). Eigen argued that Precision should tender payment because the parties had entered into an enforceable settlement.

14. On March 18, 2004, Precision filed Defendant Precision Airmotive Corporation's Answer to Plaintiff's Petition to Enforce Settlement and New Matter. ("Precision's Answer to the Petition to Enforce"). On the same day, March 18, 2004, Precision filed the petition which is a subject of these proceedings, denominated as the Petition of Precision Airmotive Corporation for Relief and Request for Discovery and A Hearing ("Precision's Petition Requesting Discovery and A Hearing").

15. Neither the estates nor their counsel had in their personal possession a full copy of the USAU Beech Duke Policy at any time prior to the settlement on January 26, 2004, although

this fact was unknown to Precision. After the settlement Precision had requested from USAU a copy of the USAU Beech Duke Policy before filing its Answer to the Petition to Enforce and Petition Requesting Discovery and a Hearing, but its efforts were unsuccessful at that time.

16. Both in its Answer to the Petition to Enforce and its Petition Requesting Discovery and A Hearing, together with the Affidavit of Richard Coyle, Precision alleged that, shortly after the settlement on January 26, 2004, Precision learned for the first time that Martin Aviation Corporation and Martin Eigen had an insurance policy on the Beech Duke, (which Precision later learned was, in fact, the USAU Beech Duke Policy) and that such policy might have provided $2 million in coverage to Martin Eigen's passengers, regardless of which plane Martin Eigen was flying. Precision alleged that it had asked about this type of insurance coverage in discovery, and that the estates had failed to produce the policy and had stated during discovery that no coverage existed. Further, the Affidavit of Richard Coyle taken in support of Precision's Petition asserted that Arthur Wolk and the estates represented that there was no such insurance. Precision alleged, *inter alia*, that if it had known about the Beech Duke coverage, the settlement amounts Precision would have been willing to contribute for the claims of the Joan and Mollie Eigen estates would have been substantially less.

17. At the time it filed both its Answer to the Petition to Enforce and Petition Requesting Discovery and A Hearing, Precision did not know the full factual circumstances surrounding its claim of an alleged failure to produce the USAU Beech Duke Policy and documents and information relating to the Policy by the estates and their counsel during discovery. Accordingly, an essential focus of Precision at that time was to ascertain those facts and circumstances. As such, Precision specifically requested "that the Court authorize discovery in these proceedings relevant to the issues raised" by the Petitions and that "the matters raised

herein be resolved at a future hearing . . .." Answer to Petition to Enforce, p. 21; Precision's Petition Requesting Discovery and A Hearing, p. 19.

18. On March 26, 2004, the estates filed Plaintiff's Reply to Precision's Response to Plaintiff's Petition to Enforce Settlement, and on April 7, 2004, the estates filed Plaintiff's Response to Precision's Petition for Relief and Request for Discovery and A Hearing. In these papers, the estates, *inter alia*, opposed the discovery and hearing sought by Precision and renewed their request to enforce the settlement as agreed.

19. The trial court held oral argument on April 27, 2004. The court did not allow discovery or hold an evidentiary hearing.

The Trial Court's April 29, 2004 Memorandum Opinion and Order

20. On April 29, 2004, this court (per Colins, J.) issued an order granting the estates' Petition to Enforce Settlement, and denying Precision's Petition Requesting Discovery and A Hearing.

21. The Order was supported by a five page Memorandum Opinion ("Mem. Op.") also dated April 29, 2004. The rationale of that ruling granting the estates' Petition to Enforce and denying Precision's Petition Requesting Discovery and A Hearing had several components to it. Among other things, without the policy having been produced or discovery having taken place, the court determined, as a matter of fact and law, that the policy did not apply either to the Accident Aircraft or any claims that had been asserted. *See id.*, at 3. Moreover, without discovery or an evidentiary hearing, the court held that Precision had failed to show how

discovery of Martin Eigen's insurance policy "would have materially affected the settlement offer."[3] *Id.*, at 4.

The Trial Court's June 16, 2004 Order and August 3, 2004 Opinion

22. On May 7, 2004, Precision moved for reconsideration of this court's April 29, 2004 Order and also filed a Notice of Appeal to the Superior Court. On June 16, 2004, this court (per Colins, J.) entered an Order denying Precision's Motion for Reconsideration. In conjunction with its appeal to the Superior Court, on July 23, 2004 Precision filed a Rule 1925(a) Statement of Matters Complained of on Appeal. Thereafter, on August 3, 2004, this court filed a Rule 1925(b) Opinion (per Colins, J.).

23. In the Rule 1925(b) Opinion, this court made a few minor changes; however, its holding and reasoning remained the same. Consistent with its April 29, 2004 Memorandum Opinion, the court denied discovery and held no evidentiary hearing, concluding that there had been an inadequate showing that the USAU Beech Duke Policy would have provided coverage to the Accident Aircraft or its occupants. The court again found that Precision had failed to show how the discovery of Martin Eigen's allegedly hidden insurance policy would have materially affected the settlement.

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[3] On this point, the trial court further noted:

> After three weeks of trial, only after learning that the flight/maintenance logs had been altered by a witness/employee of Defendant Flightways did defendant Precision enter into this settlement to limit exposure and avoid the possibility of punitive damages.

Mem. Op. at 3.

The Superior Court's April 20, 2005 Opinion

24. Following Precision's appeal and after hearing oral argument, the Superior Court filed its opinion on April 20, 2005. 874 A.2d 1179. The Superior Court affirmed in part and reversed in part and remanded for further proceedings consistent with its Opinion. *See id.*, at 1191. Recognizing that Precision was not seeking to rescind the settlement, but rather, was seeking discovery and an evidentiary hearing, and to affirm the settlement and seek affirmative relief in the nature of damages, *see id.*, at 1183, the Superior Court affirmed the trial court in granting the estates' Petition to Enforce the settlement. At the same time, however, the Superior Court held that the trial court should not have denied Precision's Petition seeking discovery and an evidentiary hearing based on the limited record before it. *See id.*, at 1191.

25. At the outset of its Opinion, the Superior Court reviewed the factual and procedural background of the matter. *See id.*, at 1181-82. Among other things, it summarized certain allegations made by Precision in its Petition Requesting Discovery and A Hearing. In a footnote to that discussion, the Superior Court quoted from a letter which one of the estates' counsel, Arthur Wolk, had written on the day of settlement, January 26, 2004, to USAU representative Tim McSwain, demanding payment of the policy limits on the USAU Beech Duke Policy. That letter, as well as the Affidavit of Richard Coyle, may have significantly influenced other aspects of the Superior Court's decision, including the Court's discussion of one element (intent to defraud) of a claim that the Superior Court concluded may be cognizable under the circumstances of the case (fraud in the inducement of the settlement).

26. After providing the factual and procedural context, the Superior Court turned to the legal issues before it. The Court distilled the questions raised on appeal into two central issues, in essence: (1) whether, as a matter of law, Pennsylvania law provided any relief to a

party who had settled litigation where there was an allegation that documents and information requested in discovery had not been provided and (2) whether, if such relief were available as a matter of law, Precision was entitled to discovery and an evidentiary hearing on its request for such relief in this case before that relief could be denied. *See id.*, at 1184.

27. Addressing the first issue, the Superior Court held that a party in Precision's position could affirm the settlement and pursue affirmative relief in the nature of damages on a theory of fraudulent inducement of the settlement. *See id.*, at 1184.

28. The Superior Court set forth the elements of such a fraud-in-the-inducement claim as follows:

> The elements of fraud in the inducement are as follows: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

Id., at 1185 (quotations and citation omitted) (emphasis added).

29. Thus, the Superior Court made it clear that a representation made "with the intent of misleading another into relying on it" (i.e., a knowingly false representation with the intent to defraud or mislead), are elements of the fraudulent inducement of settlement claim which Precision would have to establish on remand in order to obtain affirmative relief.

30. The Superior Court noted in its decision that, "[o]f course, this Court is not the fact-finder and cannot determine Eigen's intent." *Id.*, at 1188. The Court also stated, "[w]e do not declare at this point that Eigen or his counsel committed fraud in the inducement." *Id.*, at 1191.

31. The essence of the Superior Court's holding was that the trial court's denial of relief to Precision was premature, in the absence of discovery and an evidentiary hearing, and the Court remanded the case for such proceedings.

Proceedings on Remand

32. Following the Superior Court's relinquishment of jurisdiction to the Court on July 21, 2005, we became actively involved in supervision of the Superior Court's direction that discovery and an evidentiary hearing be allowed on the elements of the fraud-in-the-inducement claim.

33. In late July and early August, a number of conferences were held before this Court, and eventually the Court appointed Harris T. Bock, Esquire to act as Discovery Master in this matter.

34. Under Discovery Master Bock's close supervision over the course of the next approximately five months, extensive discovery proceedings then ensued. Such discovery proceedings included: (1) the service of requests for production of documents by the parties on one another and extensive production of documents by the parties in response thereto; (2) the litigation and resolution pursuant to the recommendations of Discovery Master Bock of extensive and significant privilege issues relating to the production of documents; (3) the service of interrogatories by the parties on one another and answers by the parties thereto; (4) extensive production of documents by third-parties to the dispute, including Precision's co-defendants in the *Eigen* litigation, Textron and Flightways, and various involved insurers, including USAU (Textron's insurer and the issuer of the USAU Beech Duke Policy) and AIG Aviation, Inc. (Flightways' insurer), as well as Rampart Brokerage, Inc., the broker that had secured the USAU

Beech Duke Policy; (5) extensive depositions of the parties and persons related to the parties: the estates' representative, Albert Eigen; Barry Eigen (Albert Eigen's nephew and son of Martin and Joan Eigen); Arthur Wolk, Bradley J. Stoll, and Philip J. Ford (trial counsel for the estates); Richard C. Coyle, William J. Ricci, and Francis Grey (trial counsel for Precision); Anthony Faiia (an AIG Aviation, Inc. representative who participated in and negotiated Flightways' settlement); J. Bruce McKissock (trial counsel for Flightways); Ann T. Field (trial counsel for Textron), Martin Schanback (co-owner of Martin Aviation Corp.); William Monkman, Fred Willcutt, and Scott Grafenauer (individuals related to Precision).

Summary Findings Regarding the Required
Elements of A Knowingly False Statement or An Intent to Defraud or Mislead

35. The extensive discovery record developed on remand supports the finding that the non-production of the USAU Beech Duke Policy or any other documents or information related thereto in response to discovery requests or otherwise to provide such information or documents pursuant to other requests prior to the January 26, 2004 settlement was unintentional on the part of the estates and their counsel, including Arthur Wolk and others at the Wolk Law Firm who worked on the matter, and that those responses were honestly made, in good faith, not knowingly false and did not occur with any conscious or subjective intent to mislead, misrepresent, or defraud.

36. The extensive discovery record also supports the finding that the estates and their counsel at the Wolk Law Firm who addressed and responded to Precision's discovery did so in good faith with a belief in their truth and accuracy at the time the responses were made.

37. The extensive discovery record also supports the finding that Arthur Wolk was not personally involved in responding to Precision's discovery requests that are at issue in this

matter, did not participate in preparing responses to those requests, did not sign the responses to those requests, and did not review those requests prior to the settlement. Arthur Wolk did not discuss with Precision's counsel, William Ricci or Richard Coyle, or their law firms, either the discovery responses at issue, the existence of insurance, or the USAU Beech Duke Policy prior to January 26, 2004.

38. Additional factual findings supported by the discovery record and which support these summary findings are set forth below.

Findings Regarding The Absence of A
Knowingly False Statement or An Intent to Defraud or Mislead

39. On October 25, 2002, one of Precision's counsel served on the estates' counsel the discovery requests which are at issue in these proceedings. Although there were three separate sets of Requests for Production and Interrogatories directed to each of the three estates, the focus of the Superior Court's Opinion was on Request No. 26 of Precision Airmotive Corporation's Requests for Production to Plaintiff Albert D. Eigen, and to the Estate of Martin Eigen By and Through Albert D. Eigen, Executor (hereinafter "Precision's Requests for Production to Martin Eigen's Estate").

40. That Request for Production read as follows:

> 26. To the extent not already produced in response to Request No. 1, all insurance policies applicable to the accident aircraft or its occupants at the time of the accident; all documents relating to insurance claims made by the Estate, and all documents relating to the investigation of the crash by any insurer.

41. On February 12, 2003, the estates' counsel served Martin Eigen's Estate's Response to Precision's Requests for Production. In response to Request for Production No. 26, that response stated:

> RESPONSE:
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> Plaintiff has produced all documents in its possession. Plaintiff does not have a copy of the insurance policy for the accident aircraft. Plaintiff's decedent did not own the accident aircraft. Plaintiff directs defendant to the documents provided at the deposition of John Santamauro.

42. On February 25, 2003, the estates' counsel served Martin Eigen's Estate's Supplemental Response to Precision's Requests for Production. Such Supplemental Response supplemented the prior response to Request No. 26 of Precision's Requests for Production to Martin Eigen's Estate. The supplemental response read as follows:

> RESPONSE:
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> All discoverable information responsive to the requests that are in Plaintiff's possession have been produced.

43. The USAU Beech Duke Policy and documents relating to that policy were not produced by the estates in response to Request No. 26 prior to settlement on January 26, 2004. The discovery record supports the finding that these responses were honestly made, not knowingly false and did not occur with a conscious intent to defraud, misrepresent, or fraudulently induce a settlement by the estates, the Wolk Law Firm, any of the Wolk Law Firm attorneys who participated in preparing the responses, or Arthur Wolk, who did not see the requests nor participate in preparing the responses.

44. The discovery record establishes that Arthur Wolk was not personally involved with the preparation of Martin Eigen's Estate's response to Request for Production No. 26. This

is established by the testimony of attorneys at the Wolk Law Firm. *See* Deposition of Philip J. Ford, p. 100 ("Mr. Wolk's not involved in the discovery process."); *id.*, p. 10 ("Well, because the head of our firm tries the cases. My role is mostly related to discovery and working cases, and Mr. Wolk's role is more precisely in the trial arena, the trial of cases."); Deposition of Bradley J. Stoll, p. 46 ("Q. -- at the time you were working on responding to the Precision discovery request. Did you talk to [Mr. Wolk] about the discovery requests at that time? A. I have no recollection of talking to him about the discovery requests. I don't think I did. Q. Ever? A. Not back in October -- December, October [of 2002], the time frame that you gave me. Q. Do you have any recollection of having spoken to him about responding to Precision's discovery requests at any time before February 25, 2003? A. I don't remember talking to him about this at all."); Deposition of Arthur Wolk, p. 102 ("Q. Did you have any involvement in what I'll call -- and hopefully you'll understand what I am saying; if you don't, I'll try to clarify -- what I will call the written discovery? A. None. Q. None at all? A. None."); *see also*, *id.*, pp. 102-03.

45. The discovery record further establishes that Arthur Wolk's principal role in connection with the Eigen litigation was as lead trial counsel for the plaintiff estates. *See* Deposition of Philip J. Ford, p. 10, ll. 9-18; Deposition of Arthur Wolk, p. 17 ("Q. My understanding from earlier depositions is that you're the lead trial lawyer in all the aviation cases that your law firm handles. Is that a fair thing to say? A. I think so."). In this capacity, Mr. Wolk had no involvement in the preparation of the responses to discovery propounded by Precision, and the work in that regard was handled by other responsible lawyers at the Wolk Law Firm. *See* ¶ 44, *supra.*

46. The discovery record further establishes that, under the Wolk Law Firm's standard operating procedures, Precision's discovery requests served on October 25, 2002 were

in fact not delivered to Arthur Wolk at the time of their service or any time thereafter prior to settlement on January 26, 2004. Those discovery requests, instead, were directed through the firm's normal mail handling process to two other lawyers at the Wolk Law Firm who were assigned to, and responsible for, the Eigen case. *See* Deposition of Philip J. Ford, p. 118 ("A. Yeah, but [just because the discovery was addressed to Mr. Wolk] doesn't mean [the written discovery] would have gone to him. In fact, I'm sure it would not have gone to him. Q. Why are you sure about that? A. Well, because Mr. Wolk didn't involve himself in day to day answering of Interrogatories. That was done by the attorneys such as myself that was [sic] handling the case or Mr. Stoll or Ms. Slavin or one of the other lawyers. Mr. Wolk wasn't involved in answering discovery in all these cases."); Deposition of Bradley J. Stoll, p. 110 ("Q. You are saying [Precision's discovery requests] never were delivered to [Mr. Wolk]? A. I'm saying there is -- that they would never have been in his hands physically, I don't believe. They would have gone to the front desk. And the way the firm operates is everything -- pretty much everything is addressed to Mr. Wolk. It goes to the attorneys handling the case, not to Mr. Wolk."); Deposition of Arthur Wolk, p. 104 ("A. Well, the way our firm worked at the time, and to a large extent still does, if a lawyer is assigned the case responsibility, regardless of the transmittal letter that accompanies the discovery, the lawyer who is responsible for the file will get both the transmittal letter and the discovery, and he will be expected to respond to that appropriately.").

47. Without Mr. Wolk's involvement, those other two lawyers took steps to respond to Precision's discovery, including Document Request No. 26 of Precision's Requests for Production to Martin Eigen's Estate, the request which was the focus of the Superior Court's opinion. *See* Deposition of Philip J. Ford, pp. 126-27 ("Q. What did you say to [Mr. Stoll] in

that regard [concerning responding to Precision's Requests for Production]? A. Familiarize yourself with the file, my office door is always open, let's discuss how you respond to these things, I want to see a draft of the responses, if there's an issue of work product or attorney-client privilege, I want to discuss that with you to understand whether we're going to assert that privilege, and let's continue to communicate as to how you're going to go about working as a lawyer in this office."); Deposition of Bradley J. Stoll, p. 31 ("Q. Did you review the contents of that cabinet thoroughly at the time you were involved in the discovery responses? A. I did a reasonable search of the file to find everything that was provided to us by the client or would otherwise be discoverable, brought it upstairs, and began responding to your -- to Precision's request for documents and interrogatories, just in draft form."); *id.*, pp. 31-32 ("I'm testifying affirmatively that I did a reasonable search of the filing cabinet. I don't specifically remember pulling the drawers out, but that's how I did it then. I would go to the file and pull what I believed to be the targeted documents or the documents that are not created by us or -- everything in the file that was reasonably responsive.").

48. Those steps included a review of client documents in the Wolk Law Firm's possession for the purpose of identifying documents responsive to Precision's requests, as well as correspondence and communications with both Albert Eigen and Barry Eigen for the same purpose.[4] *See* ¶ 47, *supra*.

49. Although the Superior Court's opinion found nothing vague in Precision's Request for Production No. 26 insofar as it might be viewed as requesting production of the

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[4] Mr. Stoll was, at the time, newly admitted to the bar and this was his first substantive assignment on the Eigen matter. *See* Deposition of Bradley J. Stoll, p. 30 ("Q. What was the first substantive matter on which you worked relating to the Eigen matter? A. It would be the discovery responses.").

USAU Beech Duke Policy if it were applicable to the Accident Aircraft or its occupants, *see* 874 A.2d 1188, the Wolk Law Firm lawyer principally responsible for the review, response, and production provided pursuant to that request, did not view that request as calling for the production of any policy other than the Flightways' renter's policy (issued by AIG Aviation, Inc.). *See* Deposition of Bradley J. Stoll, p. 160 ("Q. On February 12, 2003, the only document that you were aware of that you believed was responsive to Request for Production No. 26 was this renter's policy that covered the accident aircraft; is that right? A. Yes.");[5] *cf.*, Deposition of J. Bruce McKissock, Vol. 2., pp. 143-45 (deponent ultimately responding to question asking, "if I asked you a question that said, set forth all insurance for the accident aircraft, the Piper, and its occupants, as that being the question, would that question trigger a response that you [sic] have disclosed the Beech Duke Policy," by stating that he would "[a]bsolutely" read such a question "to say, what would be the coverage under the accident aircraft, which means your Flightways policy[.]") (emphasis added).

50. Mr. Stoll testified that he also held that view honestly and in good faith. *See* Deposition of Bradley J. Stoll, p. 157 ("Q. 'Plaintiff has produced all documents in its possession.' That's the first sentence of your response to Request for Production No. 26. It turns out that that's not true; right? A. It is what I believed to be true at the time.").

51. The discovery record supports the finding that neither that lawyer, nor the other lawyer who worked with him in responding to Precision's request, had any knowledge that the USAU Beech Duke Policy might be applicable to the occupants of the Accident Aircraft or of any documents within the Wolk Law Firm or Eigen's possession relating to the USAU Beech

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[5] In addition, when the parties had a "meet and confer" regarding discovery issues, neither Request for Production No. 26, nor the USAU Beech Duke Policy were discussed.

Duke Policy. *See* Deposition of Bradley J. Stoll, p. 45 ("Q. But you're quite certain you never saw Petitioner's Exhibit 11 [policy documents relating to the USAU Beech Duke Policy]? A. I believe I am very certain that I never saw Petitioner's Exhibit 11 before all of this happened, 'this' being this litigation."); *id.*, p. 48 ("And I saw Petitioner's Exhibit 12 [policy documents relating to the USAU Beech Duke Policy] at the same time I saw Petitioner's Exhibit 11, which would have been probably right before the argument before Judge Collins [sic]."); Deposition of Philip J. Ford, p. 31 ("Q. When did you come to know that [USAU had issued a policy insuring Martin Eigen's Beech Duke]? A. In preparation for this deposition yesterday, I looked at an insurance policy that was issued to a Beech Duke. Whether or not it provides coverage in this case, I don't know. I'm not an expert on insurance coverages [sic]. And I really didn't even look at the policy that much. But the first time I saw that policy was yesterday.").

52. The Wolk Law Firm lawyer who drafted Martin Eigen's estate's response to Request for Production No. 26 testified that on no occasion prior to settlement was he in possession of any documents or information that he consciously chose not to produce because he had adopted a limiting construction of Request for Production No. 26 inconsistent with the view that, if the USAU Beech Duke Policy provided coverage for the Accident Aircraft or its occupants at the time of the accident, its production was called for by Request for Production No. 26. *See* Deposition of Bradley J. Stoll, pp. 135-36 ("I answered these questions as honestly as I could. I gave every [sic] information that they asked for. If they asked for a life insurance policy, I went and got it. Everything that Precision asked for, I gave it to them. There was no intent to hide anything."); *see also*, ¶ 51, *supra*.

53. In March of 2003, during a meeting in Vermont, defense counsel J. Bruce McKissock and Richard Coyle wondered about the possibility of insurance on Martin Eigen's

Beech Duke and whether the estates of Joan and Mollie Eigen had received any money under the Beech Duke Policy. *See* Deposition of J. Bruce McKissock, Vol. 2, p. 267-68 ("Q. So that if he was relying on the interrogatory answers as to the nonexistence of a policy of insurance on the Beech Duke at that time that he is meeting with you and having the discussions with you, he wouldn't be saying to you, the awareness of the existence of the policy, see if he listed it on the renter aircraft, would he? A. It doesn't make sense. Especially, you know, question, you know, did Mollie and Joan -- Q. Get any money under it? A. -- get any money under -- you know, we were aware of under -- and what we wondered, you know, 'I wonder if they got any money under the' -- Q. Under the Beech Duke policy? A. -- 'the pilot's policy.'"); *see also*, *id.*, p. 100; Deposition of J. Bruce McKissock, Vol. 1, pp. 43-44.

54. There were no communications between Arthur Wolk on the one hand, and counsel for Precision on the other, where Mr. Wolk affirmatively represented that there was no insurance on Martin Eigen's Beech Duke. *See* Deposition of William J. Ricci, pp. 55-56 ("Q. Other than that call that you remember [concerning a video demonstration], do you remember any other discussion with Arthur Wolk at all regarding any of the discovery prior to January 26? A. Not that I remember."); Deposition of Arthur Wolk, pp. 210-211; Deposition of Richard Coyle, pp. 84-86; *id.*, pp. 251-53.

55. The discovery record developed following remand also supports the finding that neither Eigen nor his counsel acted with any specific intent to withhold information regarding the USAU Beech Duke Policy until a time when it was advantageous to disclose that information-- *i.e.*, that there was a premeditated plan or that the estates or their counsel were playing "'fast and loose'" regarding the timing of disclosure. Any failure to disclose such information prior to the

settlement was, as set forth above, in good faith and without any conscious intent to defraud or mislead.

56. Moreover, based on the discovery record, it appears that the timing of the disclosure of such information to Precision, shortly after the appearance before the court on January 26, 2004 when the settlement was confirmed on the record, was motivated by facts relating to the course of the settlement discussions with Textron (insured by USAU, the issuer of the USAU Beech Duke Policy and the entity responsible for Textron's defense and settlement) during the days immediately preceding the settlement.

57. As noted above, the trial of the matter commenced on January 5, 2004 and continued for approximately three weeks until the settlement on January 26, 2004. Although settlement negotiations and discussions took place just prior to, and periodically over, that three-week period, the discussions became particularly intense during the weekend of January 24 and 25, 2004.

58. The impetus for the intensified settlement discussions that weekend was the testimony of a Flightways mechanic on January 23, 2004. During the course of that testimony, it appeared that that a logbook might have been altered by Flightways after the accident.

59. Following this disclosure, Flightways, for the first time, increased its settlement offer over and above what the other defendants were willing to pay. *See* Deposition of Anthony Faiia, pp. 27-29 ("I had approached [the other co-defendants] following my discussions with counsel and our branch manager, expressed to them that I would try to reach the co-defendants and see if I could obtain their acquiescence or their cooperation in trying to reach a settlement. . . . We had proposed paying up to 833,333 each, and then after this what I might call an anomaly,

but entry in the log book that became an arguing point for us, they took a position that because of that line entry by the mechanic, that they would not pay any more than 833,333, and they basically said go work out a compromise with Mr. Wolk, which I did try to do on either Thursday or Friday as well as Saturday and Sunday. We did reach a compromise with Mr. Wolk . . . after discussions, further discussions with Mr. Wolk on both Saturday and Sunday, he and I reached a compromise settlement at $2 million . . .."); Deposition of Fran J. Grey, pp. 118-19 ("Q. And that event, that event [the disclosure of the altered logbook] allowed Flightways to put more money on the table that than they had in the past. A. I don't know if it's allowed. Q. It stimulated. A. I don't know what Flightways was doing. Q. Okay. A. That was the result.").

60. Over the course of that weekend, Mr. Wolk, on behalf of the estates, had settlement conversations with representatives of Textron, specifically Ann T. Field and John Masten, on the subject of settlement. *See* Deposition of Arthur Wolk, p. 269 ("Q. So there was [a settlement] conversation on Sunday night, was it, with Textron's lawyer? A. Yes. Q. And that was Ann Field? A. No; it was both Ann and John Masten.").

61. As the weekend drew to a close, Mr. Wolk was of the understanding that he had received and agreed to the following settlements proposals: $1,333,333 from Precision, $2,000,000 from Flightways, and $1,333,333 from Textron (insured by USAU), for a total settlement of $4,666,666. Mr. Wolk obtained authority from his client to settle for this amount and advised his client that the case would settle for that amount. *See* ¶¶ 62-63, *infra*.

62. Mr. Wolk believed that the result of these conversations was an agreement between the estates and Textron to settle the claims asserted against it by the estates on a joint

tortfeasor basis for $1.333 million. *See* Deposition of Richard Coyle, pp. 173-74 ("Ultimately it was Precision, but as I started to say earlier, what we had was a -- as a semi-final deal was a joint deal with Precision and Lycoming where we were each going to pay 1.33 and each was contingent upon the other, and Ann -- I probably misspoke when I said deal because . . . that's not really right because Ann said she would recommend, but she had to get authority. I thought it was done. I believe Mr. Wolk thought it was done."); Deposition of Barry Eigen, pp. 32-33 ("Q. What is your understanding as to what was paid and what was not paid? A. Flightways paid the 2 million. I got a call from Arthur I think it was the next day or a couple days later. I wasn't there. I remember I got the call from him that Textron was not going to give us the million three. I believe they were only going to give us a million."); Deposition of Albert Eigen, p. 212 ("Q. Is it your understanding that Textron agreed to pay a million dollars in connection with the settlement of the underlying dispute in this matter? A. I thought it was a million and a half."); Deposition of Arthur Wolk, p. 267 ("2 million from Flightways, million 333 from Precision, and I thought [I had agreed to] a million 333 from Lycoming. Q. Oh, I see what you are saying. But it ended up being a million? A. Well, yes, it ended up being a million because they walked in the next morning and said it's only a million."); *id.*, at pp. 268-69 ("[You thought to pursue the USAU Beech Duke Policy] [t]o try to make up the difference between what you thought Textron had agreed to and what they came into court that day with? A. Yes. Not what I thought they agreed to; I know what they agreed to.").

63. Mr. Wolk communicated that belief to his client, the Eigens. *See* ¶ 62, *supra*; Deposition of Barry Eigen, p. 30 ("A. I believe the initial [settlement] number was four million six something. It's like one of those math things with the 333 number or the 666 number over it, four-six something."); Deposition of Albert Eigen, pp. 212-13 ("Q. Is it your understanding

Textron, in fact, paid what it agreed to pay in connection with the settlement of the underlying dispute in this matter? A. I don't know about all the numbers. The allocation was between the three defendants and Arthur. How they came up with the four million five or four million six was up to them. Q. It wasn't 4.33 million? A. I thought it was higher."); Deposition of Arthur Wolk, p. 267 ("Well, yes, it ended up being a million because they walked in the next morning and said it's only a million. And I'm saying, well, wait a minute, I got authorization from my client based on our conversations that Sunday night [with Textron]."); *id.*, p. 269 ("A. No. 1.33 was what [Textron] told me they were going to recommend to the people in Rhode Island. I think it's Rhode Island. Forgive me. Textron's home office. And that, based on my experience, is a perfunctory process. And then the next morning [Textron] came in and said they could only get a million, which really humiliated me in front of my client, who had already agreed to the 4.666 settlement.").

64. On the Monday following that weekend, January 26, 2004, Mr. Wolk learned that, contrary to his belief that a joint tortfeasor settlement had been achieved with Textron in the amount of $1.333 million, Textron (insured by USAU) was, in fact, only willing to settle for $1 million. *See* Deposition of Barry Eigen, pp. 32-33; Deposition of Albert Eigen, p. 212, ll. 23-24; Deposition of Arthur Wolk, p. 267, ll. 9-15; *id.*, p. 269, ll. 9-13. Mr. Wolk was furious that Textron had, in his opinion, embarrassed him in front of his client. *See* ¶ 63, *supra*; Deposition of J. Bruce McKissock, Vol. 2, pp. 221-222 ("Q. So now as you see the day unfolding, Precision and you have reached a settlement at that point in time, and you both recognize it is joint tortfeasor? A. Yes. Q. And you understood that there was a problem with Textron? A. Yes. Q. And did you know what that problem was? A. I just recall seeing Arthur in the hallway, because they were shuttling back and forth, saying, 'Can you believe they are only

offering me a million, and they had already offered me more, we had agreed to more,' something to that effect. And I knew that he was -- Q. -- upset? A. -- upset and was, I think, asking us if we were making witnesses available. He wanted to try to stick it to [Textron] at that point. . . . Q. And then after you saw that anger and frustration on Mr. Wolk, you then learned that he agreed with Textron to a settlement? A. I recall him having to call one -- I think Barry Eigen was not present in the court that day, or one of the Eigens was not present. He had to call them. And he then came back and -- came out of the judge's chamber saying, it settled, but he was not happy.").

65. On Monday morning (January 26), Mr. Wolk discussed with his client, the Eigens, Textron's unwillingness to pay the full amount that they believed had been agreed to on January 25. *See* Deposition of Barry Eigen, pp. 34-35 ("Q. And how did it come about that ultimately the [lower Textron settlement] amount was accepted? A. Arthur said that we should take it to get the trial over with. And he -- it was approximately $300,000 less and he felt that we might be able to make that money up elsewhere. Q. Did he tell you where he thought you might be able to make up -- A. Yes. Q. And where was that? A. The insurance company that represented the Duke -- my father's policy with the Duke was the same insurance company as Textron Lycoming. Q. And it was your understanding that he was going to try and make up the difference -- A. Make up the difference. Q. -- by getting proceeds under that policy, under the Beech Duke policy? A. That's what I understood."); Deposition of Albert Eigen, p. 187 ("Q. And what do you recall that [sic] you were told with respect to Textron's not wanting to settle? A. I recall that they didn't want to pay what they had agreed to pay and we all agreed, meaning Barry and I and the attorneys, that we should try to get the money a different way. Q. And what was that different way? A. That was by using the liability policy, basically that I

should sue myself, try to get my son Michael to step into my shoes as executor in order to do that.").

66. Nevertheless, Mr. Wolk and his client decided to proceed with the settlement with Textron, believing that the shortfall in the settlement amount Textron had agreed to pay might be obtained through a separate claim against Textron's insurer (USAU) on the USAU Beech Duke Policy, of which Mr. Wolk was aware, but which the other lawyers in the Wolk Law firm who participated in responding to Precision's discovery were not. *See* ¶¶ 51, 65, *supra*.

67. To this end, Mr. Wolk's anger and embarrassment led him to write and send his January 26, 2004 letter to USAU's Mr. McSwain--an anger and embarrassment borne of Mr. Wolk's belief that Textron had failed to obtain the higher settlement amount (approval of which he and other defense counsel believed was merely perfunctory, *see* ¶¶ 62-63, *supra*) after Mr. Wolk had already obtained his client's consent to settle for that higher amount. Following that letter, and after consulting his client, Mr. Wolk, Mr. McSwain and Mr. Russell Mirabile (another USAU representative) engaged in communications relating to Mr. Wolk's January 26, 2004 letter to Mr. McSwain and that letter's demand for the $2 million policy limits, with an eye towards Mr. Wolk making up for his client, the difference between the settlement amount he believed Textron had presented to him on Sunday, and the amount presented to him on Monday.

68. By email dated February 6, 2004, 1:49 p.m., USAU's Mr. McSwain responded to Mr. Wolk's January 26, 2004 letter. In that email, Mr. McSwain, on behalf of USAU, offered $200,000 (*i.e.*, "$100,000 to each of the passengers in exchange for a full and final release of all claims . . .."). By email dated February 6, 2004, 5:50 p.m., Mr. Wolk responded by making a counteroffer to settle the claim to the effect that, "[i]f you will pay $667,000 now, this claim goes

away." Mr. Wolk also made reference in that email to one benefit under the USAU Beech Duke Policy: "the voluntary guest payment."

69. On March 24, 2004, as part of a settlement effectively splitting the difference between Mr. Wolk's latest demand and USAU's counteroffer, a settlement in the amount of $350,000 was reached. In order to effectuate this settlement, Albert Eigen sent a demand letter to USAU's Mr. McSwain. In part, that letter read:

> I am requesting that, under the voluntary guest payment coverage of the policy of insurance issued to Martin Aviation which was half owned by Martin Eigen, you pay $175,000 each to the estates of Mollie and Joan Eigen.

70. On April 7, 2004, USAU's Mr. McSwain wrote a letter to Albert Eigen. This letter stated that "[w]e received your letter dated 3/24/04. We agree to pay the requested amount in full and final settlement, of a disputed claim, and to compromise that claim." Thus, the Estates of Joan and Mollie Eigen settled with Martin Eigen's insurer for $350,000, the approximate difference between what Mr. Wolk believed Textron had offered on January 25 and that actual settlement amount agreed to before the court on January 26.

71. The discovery record supports the finding that Mr. Wolk and his client's decision to pursue USAU under the USAU Beech Duke Policy, and Mr. Wolk's resulting letter of January 26, 2004 to USAU's Timothy McSwain, was not a premeditated act, conceived prior to their having learned on January 26, 2004 that Textron would not pay the higher settlement amount of $1.333 million. *See* ¶¶ 66-70, *supra*; Deposition of Arthur Wolk, p. 268 ("Q. [Your conversations with Judge Colins after learning that Textron would only agree to pay $1 million in settlement] was pretty much limited to that; there's a policy out there, USAU issued it, and I'll

take a stab at that? A. I think that's the gist of the conversation. Q. To try to make up the difference between what you thought Textron had agreed to and what they came into court that day with? A. Yes.").

72. Instead, Mr. Wolk's January 26, 2004 letter to USAU's Mr. McSwain was conceived and written on that day for the purpose of making up the shortfall in the Textron settlement. *See* ¶¶ 65-67, *supra*. This was also Mr. Wolk's purpose in obtaining a joint tortfeasor release from all three defendant groups. *See* Deposition of Francis J. Grey, p. 144 ("[N]obody said anything about a joint tortfeasor release except for Mr. Wolk."); Deposition of J. Bruce McKissock, Vol. 2, pp. 226-27 ("Q. But, as you understood it, when he said, 'joint tortfeasors,' and the three defendants in the courtroom all heard that, with the experience that they had with you, they knew Arthur Wolk was bringing an additional claim or intended to or could bring an additional claim against another person arising out of this accident? A. My reaction to that was, who knows what he may be pursuing; but we have bought our peace, and we are done, and that's our purpose here, was to accomplish that. Q. Now, at that point in time, who be would be left to sue? A. Well, I don't know if he would have a savings action against Piper, that's one possibility. Q. Okay. A. Or some savings action against the pilot. Q. On the Beech Duke, you mean? A. On the Beech Duke. Or against the pilot, Martin Eigen. Q. Yes, Martin Eigen. A. Those are two that come to mind. Q. And they are obvious, aren't they? A. Yes, they are obvious.").

73. The discovery record further supports the finding that Mr. Wolk's negotiations with Mr. McSwain concerning the USAU Beech Duke Policy eventually settled upon almost the exact amount of the shortfall in the Textron settlement, and accomplished what his client believed that he had agreed to, not as part of some hidden agenda. *See* ¶¶ 63-72, *supra*.

Conclusions of Law

74. As set forth by the Superior Court, the elements of a fraud-in-the-inducement claim are as follows:

> The elements of fraud in the inducement are as follows: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

Eigen v. Textron Lycoming Reciprocating Engine Div., 874 A.2d 1179, 1185 (Pa. Super. Ct. 2005) (quotations and citation omitted) (emphasis added).

75. The discovery that Precision sought, and that the Superior Court effectively ordered, supports the finding and conclusion that the responses given by the estates and their counsel, the Wolk Law Firm, in discovery were honestly made, in good faith, and with no intent to defraud or mislead in order to induce the settlement.

76. The discovery record reflects no conduct of the estates, the Wolk Law Firm, or Arthur Wolk evidencing a knowingly false statement or an intent to defraud or mislead, and thus no fraud-in-the-inducement. As such, the Court need not and does not address the remainder of the elements of such a claim, and nothing in this Memorandum Opinion shall be construed or interpreted as a finding or conclusion of the existence or proof of any of the other elements of the fraud-in-the-inducement claim set forth by the Superior Court.

Relief

77. Accordingly, as set forth in the following Order, the Court directs that the settlement between the parties be enforced as initially agreed by payment of the $1,333,333.33 Precision previously agreed to pay, plus interest at the statutory rate of 6% simple interest from

February 27, 2004 (the date of the estates' Petition to Enforce) to the date of payment. Further, all claims between or among the parties shall be dismissed with prejudice, except that any claims by the estates, Arthur Wolk, and the Wolk Law Firm against Richard Coyle, Esquire, Perkins Coie, LLP, William Ricci, Esquire, and Lavin, O'Neil, Ricci, Cedrone & DiSipio, are to be dismissed without prejudice.

ORDER

AND NOW, this 31st day of January, 2006, upon consideration of the foregoing findings of fact and conclusions of law, and upon joint application of the plaintiffs/respondents Albert D. Eigen, Executor of the Estates of Martin Eigen and Joan Eigen, Deceased, and Albert D. Eigen, Administrator of the Estate of Mollie H. Eigen, Deceased ("estates") and defendants/petitioner Precision Airmotive Corporation ("Precision"), by their respective counsel, it is hereby ORDERED and DECREED as follows:

1. Precision is hereby ordered to pay the amount of the previously agreed settlement between it and the estates in the amount of $1,333,333.33, plus interest at the statutory rate of 6% simple interest from February 27, 2004 to the date of payment within ten (10) days after entry of this Order. The certificate of deposit deposited with the Prothonotary of the Court is hereby released and shall be returned to Precision or its attorneys in order to effect the foregoing payment.

2. All claims remaining between the estates and Precision, including the claims raised in the Petition of Precision Airmotive Corporation for Relief and Request for Discovery and A Hearing and the estates' Petition to Enforce Settlement and any claims for damages and/or sanctions by or against the estates, Precision or their counsel, are hereby DISMISSED WITH PREJUDICE, except that any claims by the estates, Arthur Wolk and the Wolk Law Firm against

Richard Coyle, Esquire, Perkins Coie, LLP, William Ricci, Esquire, and Lavin, O'Neil, Ricci, Cedrone & DiSipio, are DISMISSED WITHOUT PREJUDICE.

3. The Court retains subject matter jurisdiction to enforce the provisions of the parties' Final Settlement Agreement.

4. All parties to bear their own costs.

SO ORDERED:

Moss, Sandra Mazer J.

COPIES SENT
PURSUANT TO Pa.R.C.P. 236(b)

JAN 31 2006

FIRST JUDICIAL DISTRICT OF PA
USER I.D.: ALE