

DALLAS COUNTY, TEXAS

Page 1

Company (collectively “the Aggressive Defendant”) is a Texas insurance services company with its principal office in Dallas County, Texas.

4. Defendant Shell Aviation, LLC is a Kansas limited liability company with its principal office in Collin County, Texas.

5. Defendant Michael D. Shell is an individual residing in Collin County, Texas.

6. Defendant Curt Richmond is an individual residing in Collin County, Texas.

C. Jurisdiction and Venue

7. This Court has subject matter jurisdiction over this matter pursuant to Chapter 37 of the Tex. Civ. Prac. & Rem. Code. This Court has personal jurisdiction over all defendants because all defendants are organized in, residents of and/or have their principal offices in Texas.

8. Venue is proper in this Court pursuant to Tex. Civ. Prac. & Rem. Code §15.002 because the Aggressive Defendant has its principal office in Dallas County, Texas.

D. Facts

9. On December 3, 2011, Lauren Scruggs was severely and catastrophically injured when she was struck by the propeller of an Aviat A-1C-180 Aircraft (N62WY) at the Aero Country Airport in McKinney, Texas. The aircraft was owned by Shell Aviation, LLC, which is a company wholly owned by Michael D. Shell.

10. Ms. Scruggs had taken a local flight in the aircraft to view Christmas lights. Once the flight ended, the pilot, Curt Richmond, brought the aircraft to a stop, but left the engine running and the propeller spinning. Ms. Scruggs then exited the aircraft and was walking on the tarmac when the incident occurred.

11. As a result of the incident, Ms. Scruggs sustained very severe injuries, including, but not limited to, the loss of her left hand, the loss of her left eye, and cranial damage.

12. The aircraft is insured through a policy issued by the Aggressive Defendant to Shell Aviation, LLC, policy number AS297139-00. A copy this policy is attached hereto as Exhibit A.

13. Curt Richmond, the pilot of the aircraft, owned a separate aircraft that is insured through a policy issued by the Aggressive Defendant to Mr. Richmond, policy number AS291368-00. Although this policy covers an aircraft that was not involved in this incident, it contains a provision that extends coverage to other aircraft flown by Mr. Richmond. A copy of this policy is attached hereto as Exhibit B.

13. The above-referenced and attached policies are essentially identical in their limits and provisions. Both contain limits of one million dollars (\$1,000,000) per occurrence, and both have a sub-limit of one hundred thousand dollars (\$100,000) per passenger.

14. Additionally, both policies define the term “passenger” as “... any person, other than the pilot, who is in the Aircraft or getting in or out of it.” See, Ex. A & B, p. 4, ¶ 1. j.

15. Subsequent to the incident, representatives of the Aggressive Defendant verbally offered to pay the one hundred thousand dollar (\$100,000) per passenger sub-limits from each of the two policies to Ms. Scruggs for a total offer of two hundred thousand dollars (\$200,000). The representatives of the Aggressive Defendant, by the offer and through the explanations in support of the offer, made clear that the Aggressive Defendant takes the position that Ms. Scruggs was a passenger, as that term is defined in the two policies, at the time of the incident.

16. Ms. Scruggs, in contrast, contends that she was not a passenger, as that term is defined in the two policies, because she was not in the aircraft or getting in or out of it at the time of the incident. Accordingly, Ms. Scruggs contends that she should not be limited to the one hundred thousand dollar (\$100,000) per passenger sub-limits stated in the two policies.

E. Suit for Declaratory Relief

17. This action is being brought pursuant to Chapter 37 of the Tex. Civ. Prac. & Rem. Code.

18. Section 37.004 of that Chapter states, in relevant part, that “A person interested under a ... written contract ... or whose rights, status or other legal relations are affected by a ... contract ... may have determined any question of construction or validity arising under the ... contract ... and obtain a declaration of rights, status or other legal relations thereunder.”

19. In this matter, the Aggressive Defendant has made an offer of settlement that is based entirely on its interpretation of the scope of the term “passenger” that is included in the applicable policy provisions. The Aggressive Defendants clearly contend that the phrase “getting out of” the aircraft (as it relates to the definition of “passenger” contained in the policies) extends beyond the physical act of climbing out of the plane and continues for some unknown period of time after a person is physically on the tarmac or ramp.

20. Ms. Scruggs, in contrast, takes the literal and logical view of the term “getting out of” the aircraft, and contends that she was no longer a “passenger” because she had completed her exit from the aircraft prior to the time of the incident and was physically located on the tarmac when the incident happened. Until struck by the propeller, she was not in physical contact with the aircraft after her exit.

21. This is a live controversy because the determination of this issue directly affects the ongoing settlement negotiations between Ms. Scruggs and the Aggressive Defendant, and the outcome of this issue clearly affects her rights and status under the insurance policies at issue.

22. Plaintiff, through this action, seeks to have the Court interpret the definition of the term “passenger” as included in the policy provisions, and specifically, Ms. Scruggs seeks a determination of the scope of the phrase “getting out of” the aircraft as it relates to the policies’ definition of a “passenger.”

F. Prayer for Declaratory Relief

23. For these reasons, Plaintiff asks that the court issue citation for defendants to appear and answer, and that Plaintiff be awarded a judgment against defendants for the following:

- a. A declaratory judgment offering the Court's interpretation and determination of the term "passenger," and specifically the scope of the phrase "getting out of" the aircraft as it relates to that definition;
- b. Court costs;
- c. Attorney fees; and,
- d. All other relief to which Plaintiff is entitled.

Respectfully submitted,

/s/ William O. Angelley
William O. Angelley
State Bar No. 24001658
Jeffrey W. Hightower, Jr.
State Bar No. 00793951
HIGHTOWER ANGELLEY, LLP
4144 N. Central Expwy.
Suite 1230
Phone: 214-580-9800
Fax: 214-580-9804
Email: wil@hightangel.com
Email: jeff@hightangel.com

ATTORNEYS FOR PLAINTIFF