

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

SUSAN DURKIN LAUGELLE,)
individually and as personal)
representative of the Estate of Joseph)
Laugelle, Jr., deceased, and as Next)
Friend to Anna Grace Laugelle and)
Margaret Grace Laugelle,)

Plaintiffs,)

v.)

C.A. No. 10C-12-054 PRW

BELL HELICOPTER)
TEXTRON, INC., et al.,)

Defendants.)

Submitted: March 6, 2014

Reargument Granted: March 28, 2014

Decided: June 11, 2014

OPINION AND ORDER

*Upon Defendants/Third-Party Plaintiffs, Bristow Group, Inc./Air Logistics, LLC's,
Motion for Reargument of Third-Party Defendant Rotorcraft Leasing Company,
LLC's Motion for Summary Judgment,*

GRANTED IN PART AND DENIED IN PART.

J. Scott Shannon, Esquire and Art C. Aranilla, Esquire, Marshall Dennehey Warner Coleman & Goggin, Wilmington, Delaware, J. Bruce McKissock, Marshall Dennehey Warner Coleman & Goggin, Philadelphia, Pennsylvania, Attorneys for Defendants/Third-Party Plaintiffs Bristow Group, Inc./Air Logistics, LLC.

Vernon R. Proctor, Esquire and Meghan A. Adams, Esquire, Proctor Heyman LLP, Wilmington, Delaware, Gregory W. Carboy, Esquire and Jacquelyn V. Clark, Esquire, Cowles & Thompson, P.C., Dallas, Texas, Attorneys for Third-Party Defendant Rotorcraft Leasing Company, LLC.

WALLACE, J.

I. INTRODUCTION

This action arises out of a helicopter crash that occurred on December 11, 2008, in the Gulf of Mexico, off the coast of Sabine Pass, Texas.¹ Joseph Laugelle, Jr., the pilot of the helicopter (“Pilot”), was transporting four passengers to an off-shore oil rig when the helicopter went down about two miles offshore.²

In December 2010, Plaintiff Susan Durkin Laugelle, the Pilot’s wife, brought suit against the manufacturers of the helicopter, its engine, and its engine accessories, as well as a company that previously owned and maintained the helicopter, Bristow Group Inc./Air Logistics, LLC. Mrs. Laugelle alleges, in part, that some mechanical failure of the helicopter led to the fatal accident.³

Third-Party Plaintiff Bristow Group, Inc./Air Logistics, LLC (“Bristow/AL”) seeks to enforce protection mechanisms included within the agreement for sale of the accident helicopter between itself and Rotorcraft Leasing Company, LLC (“RLC”), specifically indemnification and defense provisions and a contractual agreement to provide insurance. RLC challenged the enforceability of these provisions claiming that Bristow/AL filed its action against RLC outside of Delaware’s three-year statute of limitations, and that the contractual

¹ See Complaint, ¶ 1.

² See *id.* at ¶¶ 52, 53.

³ See *id.*

indemnification provision is unenforceable under Delaware law. The Court granted summary judgment in favor of RLC on its claims in an opinion dated February 27, 2014.⁴ Bristow/AL then moved for reargument which the Court granted on March 28, 2014. Upon consideration of the parties' claims on reargument, the Court grants summary judgment in favor of RLC on the claim of obligation to indemnify, and grants summary judgment in favor of Bristow/AL on the claim of breach of contract for RLC's failure to provide insurance and on RLC's obligation to defend. The Court further denies Plaintiffs' Motion in Limine to Sever the Cross-Claim between Bristow/AL and RLC.

II. FACTUAL AND PROCEDURAL BACKGROUND

Third-Party Bristow/AL owned and operated various fixed and rotor wing aircraft, including small and mid-sized helicopters that were used in connection with Part 135⁵ charter services to offshore oil and gas facilities. Third-Party Defendant RLC also owned and operated a fleet of aircraft, including small and mid-sized helicopters, which it used in connection with Part 135 air charter

⁴ *Laugelle v. Bell Helicopter Textron, Inc.*, 88 A.3d 110, 120 (Del. Super. Ct. 2014).

⁵ *See* Ex. B to Bristow/AL's Mot. for Summary Judgment, Mar. 22, 2013, at ¶ B. A Part 135 Certificate holder "means a person holding an operating certificate issued under part 119 of title 14, Code of Federal Regulations, that is authorized to conduct civil helicopter air ambulance operations under part 135." 49 U.S.C. § 44730 (2012); *see Hasler Aviation, L.L.C. v. Aircenter, Inc.*, 2007 WL 2263171, at *2 (E.D.Tenn. Aug. 3, 2007) ("Before any aircraft may be placed into service, its owner must obtain from the FAA an airworthiness certificate, which denotes that the particular aircraft in question conforms to the type certificate and is in condition for safe operation.") (quoting *United States v. Varig Airlines*, 467 U.S. 797, 804, 104 S.Ct. 2755, 81 L.Ed.2d 660 (1984)).

services to offshore oil and gas facilities. In August 2008, Bristow/AL and RLC entered into an Asset Purchase Agreement (“APA”) under which Bristow/AL agreed to sell the bulk of its small and mid-sized helicopter fleet to RLC. Under Federal Aviation Administration (“FAA”) requirements for such a sale, the aircraft would have to first be transferred from Bristow/AL’s Part 135 Air Carrier Certificate to RLC’s Certificate. Before such a transfer would be effective, the parties were required to prepare and file various documents and to obtain FAA approval of the transfer.

Given the often time-intensive nature of this process, RLC and Bristow/AL entered into a Transition Service Agreement (“TSA”) pursuant to which Bristow/AL agreed to continue as the operator of the aircraft Rotorcraft acquired, but which had not yet been transferred to RLC’s Part 135 Certificate. Among other provisions, the TSA required, in Section 5.03(a), that RLC provide to Bristow/AL indemnification and defense for:

[A]ny and all claims, demands, causes of action, damages, judgments, and awards of any kind or character, without limit and without regard to the cause or causes thereof, strict liability, tort, breach of contract, or the negligence of any person or persons, including that of the Indemnified Person, whether such negligence be sole, joint or concurrent, active, passive or gross, or any other theory of legal liability.

The TSA also contained an insurance obligation:

Section 6.02. Requirements.

Each of the Operator and Buyer shall maintain the following insurance and all other insurance required by applicable law for the benefit of both parties with respect to operations under this Agreement:

...

- (d) each of the Operator and Buyer shall maintain for each Purchase Aircraft owned by it (for the duration of such ownership or until this Agreement is terminated) Aircraft Liability, Bodily Injury (including liability to passengers) and Property Damage insurance with a combined single limit of not less than U.S. \$50,000,000 or its currency equivalent per occurrence.

Section 6.03. Policy Endorsements.

...

- (c) the insurance required in . . . Section 6.02(c) . . . shall include all of the following:

- (1) Further indemnity – the Indemnified Person shall be named as additional insured to the extent of the liabilities assumed by indemnifying party under this Agreement.

The TSA further mandated that the insuring party provide evidence of this coverage to the party to be insured:

Section 6.04. Evidence of Insurance. Before performing any of the services pursuant to this Agreement, each of the Operator and the Buyer shall provide the other Party with certificates or other documentary evidence reasonably satisfactory to the other Party of the insurance and endorsements required under this ARTICLE VI.

The closing date for the APA was October 30, 2008. Between August 2008 and November 2008, the effective dates of the APA, the purchased aircraft were gradually being transferred from Bristow/AL's part 135 Certificate to RLC's Part 135 Certificate. The accident helicopter was transferred on or about November 25, 2008. On December 11, 2008, the accident helicopter went down in the Gulf of Mexico while on a flight from Sabine Pass, Texas to an offshore oil platform. By then, the accident helicopter was operated by RLC and registered on RLC's Part 135 Certificate. Joseph Laugelle, Jr., the pilot of the accident helicopter and an RLC employee was fatally injured in the crash. The TSA terminated on April 30, 2009.

Mr. Laugelle's estate and heirs (hereinafter "Plaintiffs" or "the Laugelles") filed a wrongful death action in this Court on December 7, 2010, asserting, *inter alia*, claims for negligence, breach of warranty, and wrongful death against Bristow/AL. On January 20, 2011, Bristow/AL submitted a letter to RLC seeking indemnification and defense from Plaintiffs' claims. The tender of indemnification and defense was rejected by letter dated February 14, 2011-- the letter stating that Bristow/AL was not covered under any applicable aviation insurance policy.

Bristow/AL first filed a third-party action against RLC in the United States District Court for the District of Delaware on June 27, 2011. On February 14, 2012, the District Court remanded the matter to this Court for lack of subject

matter jurisdiction. Bristow/AL obtained the required leave of the Court to file the present action, ultimately filing on July 22, 2012.

Following the initiation of the third-party action, Bristow/AL and RLC filed cross-motions for summary judgment. Bristow/AL sought judgment that RLC had breached the TSA's terms when it: (1) refused to defend and indemnify Bristow/AL from Plaintiffs' claims in the underlying action; and (2) failed to name Bristow/AL as additional insureds to applicable insurance coverage. RLC alleged Bristow/AL's claims should fail because: (1) the indemnification and insurance obligations were not effective after the accident aircraft was transferred to RLC's Part 135 Air Carrier Certificate; (2) the TSA had terminated by its own terms, and therefore the indemnification and insurance requirements were no longer applicable; (3) Bristow/AL's claims were barred by the 3-year statute of limitations; and (4) Bristow/AL's claims were barred by the exclusivity provision of Delaware's Workers' Compensation Statute.

On February 27, 2014, the Court issued its Opinion⁶ granting RLC's motion for summary judgment and denying Bristow/AL's cross-motion for summary judgment. The Court's decision focused primarily on the exclusivity provision of Delaware's Workers' Compensation Statute.⁷ As interpreted by the Delaware

⁶ *Laugelle*, 88 A.3d at 120.

Supreme Court in *Precision Air, Inc. v. Standard Chlorine of Delaware, Inc.*,⁸ the statute barred Bristow/AL's recovery under the indemnification clause. As the insurance and defense provisions had been virtually ignored by the parties in their briefing and arguments on the cross-motions, and the questions concerning the statutes of limitations regarding the indemnification issue was obviated by the Court's preclusive finding, the Court did not address those other issues. Bristow/AL submitted a motion for reargument which, after further consideration, the Court granted on March 28, 2014 to put to rest all issues raised by the parties. This Opinion follows.

III. DISCUSSION

A. STATUTE OF LIMITATIONS

The parties agree that the applicable statute of limitations for both the insurance and indemnification obligation claims arise from 10 *Del. C.* § 8106:

Actions subject to 3-year limitation. . . . (a) [N]o action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action.⁹

⁷ See DEL. CODE ANN. tit. 19, § 2304 (2013) ("Every employer and employee, adult or minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.").

⁸ 654 A.2d 403 (Del. 1995).

⁹ DEL. CODE ANN. tit. 10, § 8106(a) (2013).

Under well-established Delaware law, the accrual of a cause of action for breach of contract arises, and the statute of limitations begins to run, “at the time the contract is broken, not at the time when the actual damage results or is ascertained.”¹⁰ In its summary judgment motion, RLC argues that the three-year statute of limitations precludes Bristow/AL’s claims as time-barred. Generally, “the defendant bears the burden of proving that a limitations period has lapsed and that claim is time-barred.”¹¹ “When a complaint asserts a cause of action that on its face accrued outside the statute of limitations, however, the plaintiff has the burden of pleading facts leading to a reasonable inference that one of the tolling doctrines adopted by Delaware courts applies.”¹²

The parties entered into the TSA in 2008. Bristow/AL did not file the present action until July 2012. Facially, it appears that Bristow/AL’s cause of action accrued outside of the statute of limitations period. Bristow/AL contends: (1) RLC’s breaches were inherently unknowable under the “time of discovery”

¹⁰ *Worrel v. Farmers Bank of State of Del.*, 430 A.2d 469, 472 (Del. 1981) (internal citation omitted); *Scott Fetzer Co. v. Douglas Components Corp.*, 1994 WL 148282, at *4 (Del. Ch. April 12, 1994); *Smith v. Goodville Mut. Cas. Ins. Co.*, 2010 WL 8250828, at *4 (Del. Super. Ct. Oct. 21, 2010).

¹¹ *SPX Corp. v. Garda USA, Inc.*, 2012 WL 6841398, at *2 (Del. Super. Ct. Dec. 6, 2012) (quoting *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063, at *14 (Del. Ch. Dec. 23, 2008)).

¹² *Winner*, 2008 WL 5352063, at *14 (citing *Yaw v. Talley*, 1994 WL 89019, at *6 (Del. Ch. Mar. 2, 1994)).

rule, and therefore the cause of action did not arise—and the statute of limitations did not begin to run—until RLC refused Bristow/AL’s tender in early 2011; or, alternatively (2) that the statute of limitations was tolled when Bristow/AL filed its original action in the District Court, and therefore its July 2012 filing in this Court was timely.

1. “TIME OF DISCOVERY” RULE.

Under Delaware law, a cause of action for breach of contract arises, and the statute of limitations begins to run, at the time the contract is breached, not when the actual harm occurs.¹³ But under the time of discovery rule, when a person is blamelessly ignorant of an “inherently unknowable injury . . . and the harmful effects thereof develop[] gradually over a period of time, the injury is ‘sustained’ . . . when the harmful effect first manifests itself and becomes physically ascertainable.”¹⁴ Delaware courts have applied the time of discovery rule to actions involving negligence,¹⁵ products liability,¹⁶ accounting malpractice,¹⁷ and

¹³ See, e.g., *Worrel*, 430 A.2d at 472.

¹⁴ *Morton v. Sky Nails*, 884 A.2d 480, 482 (Del. 2005) (quoting *Layton v. Allen*, 246 A.2d 794, 798 (Del. 1968), *superseded by statute on other grounds*, see *Dambro v. Meyer*, 974 A.2d 121, 137 (Del. 2009)).

¹⁵ *Morton*, 884 A.2d at 482-83.

¹⁶ *Bendix Corporation v. Stagg*, 486 A.2d 1150 (Del. 1984).

¹⁷ *Coleman v. PricewaterhouseCoopers, LLC*, 854 A.2d 838 (Del. 2004).

corporate fraud.¹⁸ The only two requirements for successfully invoking the time of discovery rule “are an ‘inherently unknowable’ injury and a ‘blamelessly ignorant’ plaintiff.”¹⁹ To properly evaluate Bristow/AL’s contention that the time of discovery rule should apply to its claims, the Court must examine each claim separately.

For the claim of breach of contract for failure to insure, Bristow/AL was not blamelessly ignorant, nor was the injury inherently unknowable, and therefore the time of discovery rule does not apply. RLC was required under the TSA to not only obtain insurance coverage for Bristow/AL but also, under Section 6.04, to provide Bristow/AL evidence of the insurance coverage’s existence. RLC failed to obtain insurance coverage. This is undisputed. Obviously, RLC also failed to provide evidence of coverage to Bristow/AL. There was no insurance coverage to evidence. At the very least, the failure to notify Bristow/AL of the existence of insurance, or to provide evidence thereof, constituted inquiry notice²⁰—if not actual notice—of RLC’s breach. That was not inherently unknowable, and

¹⁸ *Wal-Mart Stores, Inc. v. AIG Life Insurance Co.*, 860 A.2d 312 (Del. 2004).

¹⁹ *Morton*, 884 A.2d at 482.

²⁰ *See Wal-Mart Stores*, 860 A.2d at 319 (Under the “discovery rule” the statute is tolled where the injury is “inherently unknowable and the claimant is blamelessly ignorant of the wrongful act and the injury complained of.” In such a case, the statute will begin to run only “upon the discovery of facts ‘constituting the basis of the cause of action *or* the existence of facts sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery’ of such facts.”) (emphasis in original).

therefore the statute of limitations is not tolled. Rather, the statute began to run at the time of the actual breach—more than three years before the present action was initiated.

Bristow/AL's cause of action for breach of contract for failure to defend, however, did not arise until the Laugelles actually initiated the underlying action and RLC rejected Bristow/AL's tender. This occurred within the 3-year statute of limitations period.

The cause of action for failure to indemnify has not yet ripened, as Bristow/AL has yet to make payment to the Laugelles through a judgment or settlement, and ultimately may never do so. A cause of action arises, and the statute of limitations begins to run, for failure to indemnify “only when the cause of action for indemnity arises, or the indemnitee’s [here, Bristow/AL’s] liability is fixed and discharged. The determining factor is the point at which the indemnitee suffers loss or damage through payment of a claim after judgment or settlement.”²¹ In the event of refusal to indemnify, the cause of action may not ripen until the time that the actual refusal is communicated, and the outcome of the underlying dispute can be “resolved with certainty.”²² Because Bristow/AL has neither made

²¹ *Chesapeake Utils. Corp. v. Chesapeake & Potomac Tel. Co. of Md.*, 401 A.2d 101, 102 (Del. 1979).

²² *See LaPoint v. AmerisourceBergen Corp.*, 970 A.2d 185, 198 (Del. 2009) (quoting *Scharf v. Edgcomb Corp.*, 864 A.2d 909, 919 (Del. 2004)).

a payment (and ultimately may never do so) nor received a judgment requiring such payment, the cause of action has not yet ripened.

2. DELAWARE’S SAVINGS STATUTE TOLLS STATUE OF LIMITATIONS FOR CLAIM OF DUTY TO INSURE.

Bristow/AL’s action alleging breach of contract for failure to insure falls outside of Section 8106’s 3-year statute of limitations period; if there are no applicable tolling grounds, this claim would have to be dismissed. But if the failure to insure claim was brought in this Court within the one-year grace period provided in 10 *Del. C.* § 8118(a), it is timely and not barred.

Bristow/AL argues that its initial filing in the federal district court should have tolled the statute of limitations until such time as the action was eventually filed here, thereby preserving its claim for failure to insure. In Bristow/AL’s view, the district court filing, while later dismissed for want of jurisdiction, provided adequate notice to RLC of Bristow/AL’s claims, and therefore it would be fair to RLC to allow the action to go forward. In support of its position, Bristow/AL cites *Nichols v. Canoga Industries*²³ and *De La Riva v. Vowell*.²⁴ But neither stand for as broad a proposition as Bristow/AL posits: that filing within the statute of limitations period in a court lacking jurisdiction will toll the statute of limitations

²³ 83 Cal. App. 3d 956 (1978).

²⁴ 52 Va. Cir. 388 (2000).

for a subsequent filing in an appropriate court outside of the statutory limitations period. Each presents instead a unique set of facts not present here.

In *De La Riva*, a Virginia court applied a savings statute found in the Virginia Code providing an automatic tolling when a case is initially filed in a court lacking jurisdiction.²⁵ In *Nichols*, by contrast, a California appeals court applied the rule of equitable tolling contained in § 355 of the California Code of Civil Procedure.²⁶ Both holdings are obviously cabined to the narrow confines of the particular state's statutes or procedural rule and cannot be read to create or explicate the blanket tolling rule *Bristow/AL* suggests here.

The Delaware Supreme Court has found an out-of-state filing to toll the statute of limitations in at least one situation.²⁷ Given the unique facts and policy considerations present in that case, however, it is of little aid here.²⁸ So too, with other jurisdictions' approaches to this issue, a careful examination of which reveals

²⁵ See *De La Riva*, 52 Va. Cir. at *1.

²⁶ *Nichols*, 83 Cal. App. 3d at 962 (citing Cal. C.C.P. Code § 355 (West 1992) (“If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal other than on the merits, a new action may be commenced within one year after the reversal.”)).

²⁷ *Dow Chem. Co. v. Blanco*, 67 A.3d 392 (Del. 2013) (recognizing cross-jurisdictional tolling for class action litigation filed in a foreign court).

²⁸ The *Dow* Court was principally concerned with “recognize[ing] and giv[ing] effect to the proposition that the policy considerations underlying our statute of limitations are met by the filing of a class action”; “discourage[ing] duplicative litigation of cases within the jurisdiction of our courts”; and avoiding the filing of “placeholder” suits that “would result in wasteful and duplicative litigation.” *Id.* at 395. As these are all considerations unique to class action lawsuits, and irrelevant to the present dispute, *Dow* is not controlling here.

little consistency.²⁹ If a common rule can be distilled from these seemingly conflicting holdings, however, it is this: when a state enacts a savings statute in order to provide relief from a statute of limitations bar, courts are reluctant to deviate from the specific statutory requirements to craft alternative or additional mechanisms for relief.³⁰ With this backdrop, the Court turns to Delaware's saving statutes to determine whether the statute of limitations should be tolled.

RLC argues that 10 *Del. C.* § 1902 is the appropriate savings statute:

No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original

²⁹ Compare, *Morris v. Giovan*, 242 P.3d 181, 183 (Ariz. Ct. App. 2010) (Holding that “[28 U.S.C.] § 1367(d) does not toll the statute of limitations for supplemental state law claims if the action is dismissed for lack of subject matter jurisdiction.”); *Gordon v. Law Offices of Aguirre & Meyer*, 83 Cal. Rptr. 119, 124 (Ct. App. 1999) (tolling expressly disallowed outside of circumstances enumerated in the statutes); *Chilcott Entm’t L.L.C. v. John G. Kinnard Co., Inc.*, 10 P.3d 723, 726-27 (Colo. App. 2000) (After noting that, in general, “commencement of an action in a court that lacks jurisdiction will not toll running of a statute of limitations,” determined that equitable tolling and the savings statute did not apply.); *Curtis v. Aluminum Ass’n*, 607 A.2d 509, 509 (D.C. 1992) (“There is no basis for finding that filing suit in another jurisdiction tolls the statute of limitations here”) (quoting *Namerdy v. Generalcar*, 217 A.2d 109, 113 (D.C. 1966)); *Peterson v. Hohm*, 607 N.W.2d 8, 13 (S.D. 2000) (failure of legislature to enact savings statute evidences a conscious intent not to do so; impermissible judicial legislating for the court to toll statute of limitations in the absence of one); *with, Addison v. California*, 578 P.2d 941, 943-45 (Cal. 1978) (statute of limitations tolled by filing of action in federal district court when timely notice, lack of prejudice, and good faith conduct by plaintiff all present); *Krause v. Textron Fin. Corp.*, 59 So. 3d 1085, 1090-91 (Fla. 2011) (statute of limitations tolled under savings protection of 28 U.S.C. § 1367(d)); *Torres v. Parkview Foods*, 483 N.E.2d 580, 583 (Ind. Ct. App. 1984) (applied equitable tolling protections when savings statute did not apply, but illogical result would follow from strict application of statute); *Galligan v. Westfield Ctr. Serv., Inc.*, 412 A.2d 122, 125 (N.J. 1980) (judicially created savings statute, provided lack of prejudice from late filing).

³⁰ See *Blanco v. AMVAC Chem. Corp.*, 2012 WL 3194412, at *13 (Del. Super. Ct. Aug. 8, 2012) (“This Court must tread lightly in recognizing any tolling exceptions to the General Assembly’s duly-enacted and otherwise unambiguous statutes of limitation.”).

proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, *within 60 days* after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer, discharges all costs accrued in the first court, and makes the usual deposit for costs in the second court.³¹

But it is not. Section 1902 applies only when the initial action was filed in a “court *of* this State.” The United States District Court is not a “court *of*”³² [Delaware],” but is a court of a separate sovereign that is physically located within the State.

The applicable savings statute is 10 *Del. C.* § 8118(a):³³

If in any action duly commenced within the time limited therefor in this chapter . . . if the writ is abated, or the action otherwise avoided or defeated . . . for any matter of form . . . a new action may be commenced, for the same cause of action, at any time within one year after the abatement or other determination of the original action, or after the reversal of the judgment therein.³⁴

Under this statute, an action is “abated . . . avoided or defeated” for a “matter of form” when the action is “dismissed by reason of technical flaw, lack of jurisdiction, or improper venue, as the statute require[s].”³⁵

³¹ DEL. CODE ANN. tit. 10, § 1902 (2013).

³² The Merriam-Webster Dictionary defines “of” as “to indicate belonging or a possessive relationship.” Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/of> (last visited June 6, 2014).

³³ 970 A.2d 176, 180 (Del. 2009).

³⁴ DEL. CODE ANN. tit. 10, § 8118(a) (2013).

³⁵ *Graleski v. ILC Dover*, *4 (Del. 2011) (citing *Savage v. Himes*, 2010 WL 2006573, at *2 (Del. Super. Ct. May 18, 2010)).

Accordingly § 8118(a), not § 1902,³⁶ is the appropriate savings statute to apply. Bristow/AL was afforded one year from the date of the “abatement or other determination of the original action, or after the reversal of the judgment therein”³⁷ to file the present action. The district court dismissed the suit there on February 14, 2012. Bristow/AL filed this action on July 22, 2012, well within the one-year period prescribed by § 8118(a). The failure to insure claim was therefore timely filed and is not time-barred.

3. CLAIM OF DUTY TO DEFEND SURVIVES.

The duty to defend is a separate obligation from the duty to indemnify.³⁸ The duty to defend is often described as broader than the duty to indemnify because the duty to defend is not contingent upon the underlying claim’s success.³⁹ The duty to defend arises when the allegation in the underlying complaint shows a

³⁶ In reality, 10 Del. C. § 1902 is not a savings statute so much as a removal mechanism, made necessary by the bifurcation of Delaware state courts between law and equity. A review of § 1902 case law reveals not one case in which a court, under that statute, has removed a case from a federal court to a Delaware state court. Interestingly, in *Gregorovich v. E.I. du Pont de Nemours*, 602 F. Supp. 2d 511, 518-20 (D. Del. 2009), the district court, after conducting a § 1902 analysis, applied equitable tolling in a case originating in the Delaware Justice of the Peace Court. Section 1902 requires that the court where the original claim was brought be a “court of this State.” Delaware’s Justice of the Peace Court is. So, *Gregorovich* is of no help here.

³⁷ DEL. CODE ANN. tit. 10, § 8118(a) (2013).

³⁸ *Steadfast Ins. Co. v. EON Labs Mfg., Inc.*, 1998 WL 961791, at *3 (Del. Super. Ct. Sept. 18, 1998).

³⁹ *Liggett Grp. Inc. v. Affiliated FM Ins. Co.*, 2001 WL 1456871, at *3 (Del. Super. Ct. Sept. 12, 2001).

potential for liability under the subject agreement's terms.⁴⁰ So long as at least one of the plaintiff's claims or theories for relief falls within the scope of the agreement to defend, the duty to defend will attach.⁴¹

RLC's obligation to defend Bristow/AL arises from Sections 5.02 and 5.03 of the TSA. Section 5.02(a) provides:

[RLC] shall be responsible for and hold harmless and indemnify [Bristow/AL] from and against all claims, demands and causes of action of every kind and character arising in connection herewith brought by or on behalf of any employee or personnel of [RLC], on account of bodily injury, death or damage to the property.

Section 5.03(a) explains the language "be responsible for and hold harmless and indemnify" contained in Section 5.02(a):

[T]he indemnifying party shall release, hold harmless and defend (including payment of reasonable attorney's fees and costs of litigation) the indemnified person . . . from and against any and all claims, demands, causes of action, damages, judgments and awards or any kind or character, without limit and without regard to the cause or causes thereof, strict liability, tort . . . the negligence of any person or persons, including that of the Indemnified Person [Bristow/AL], whether such negligence be sole, joint or concurrent, active, passive or gross, or any other theory of legal liability.

In the Complaint, the Laugelles allege that Bristow/AL is liable under several theories, *inter alia*, negligence, breach of warranty, and wrongful death.⁴²

⁴⁰ *Hoechst Celanese Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 1994 WL 721618, at *3 (Del. Super. Ct. April 8, 1994).

⁴¹ *Continental Cas. Co. v. Alexis I. du Pont Sch. Dist.*, 317 A.2d 101, 104 (Del. 1974).

⁴² See Complaint, ¶¶ 144-164, 180-187.

These claims, if proven at trial, would plainly fall under the scope of RLC's obligation to defend, as contemplated by Sections 5.02 and 5.03.

While RLC contends that Bristow/AL's claim of duty to defend is untimely, this argument fails for the same reasons articulated earlier. Under Delaware law, the statute of limitations begins to run "at the time the contract is broken, not at the time when the actual damage results or is ascertained."⁴³ But when a person is blamelessly ignorant of an "inherently unknowable injury . . . the injury is 'sustained' . . . when the harmful effect first manifests itself and becomes [] ascertainable."⁴⁴

Unlike the obligation to provide insurance, a duty that arose at the time that the TSA became effective, the duty to defend necessarily could not have arisen until there was something to defend against. So the very earliest the duty could have arisen here was upon the Laugel's' first filing against Bristow/AL in the underlying action—December 7, 2010. The statute of limitations does not begin to run, however, until the contract is *breached*, here February 14, 2011, the date of RLC's letter rejecting Bristow/AL's duty to defend claim. Using either of these dates, when Bristow/AL filed this present action on July 22, 2012, § 8106(a)'s

⁴³ *Worrel*, 430 A.2d at 472; *Scott Fetzer Co.*, 1994 WL 148282, at *4; *Goodville Mut.*, 2010 WL 8250828, at *4.

⁴⁴ *Morton*, 884 A.2d at 482 (internal citation omitted).

three-year statutory period had not run. Bristow/AL's claim of RLC's duty to defend was timely.

B. DELAWARE WORKERS' COMPENSATION STATUTE BARS CONTRACTUAL OBLIGATION TO INDEMNIFY.

As noted earlier, the cause to indemnify has not fully ripened. But as RLC has already resisted any indemnity-related obligation, and the indemnity obligation is distinct from the insurance and defense duties, clarification thereof as sought by reargument motion is appropriate.

The Delaware Workers' Compensation Statute, 19 *Del. C.* § 2304, provides that compensation an employee receives from workers' compensation benefits as a result of a work-related injury are the exclusive remedy for a employee or an employee's legal beneficiaries.⁴⁵ Section 2304 provides:

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.⁴⁶

While § 2304's exclusivity provision is generally accepted as eliminating any residual tort liability an employer might incur when its employee brings action against a third party,⁴⁷ Delaware courts have long held that a contractual

⁴⁵ See DEL. CODE ANN. tit. 19, § 2301 et seq. (2013).

⁴⁶ DEL. CODE ANN. tit. 19, § 2304 (2013).

indemnification agreement may preserve such an obligation.⁴⁸ Here, the question is whether a contractual indemnification provision is enforceable when invoked to cover the indemnitee's own (alleged) negligence, when the indemnitee was the party providing the services to the indemnitor, and when the indemnitor-employer had already tendered workers' compensation payment to the employee's heirs.

Bristow/AL says that under settled Delaware law, the agreement here preserved its right to indemnification. It cites as controlling *Bar Steel Constr. v. Read*, for instance, where the Court enforced such a contractual agreement despite seemingly contrary applicable workers' compensation provisions.⁴⁹ But *Bar Steel* differs from the present matter in a significant way: there, the sub-contractor, the entity actually performing the work—and the entity that negligently caused the death of the general contractor's employee—was the indemnitor; the general contractor—that received the work and that was not negligent in its own right—was the indemnitee.⁵⁰

⁴⁷ See *O'Neal v. Mercantile Press*, 2009 WL 3327228, at *1 (Del. Super. Ct. Oct. 8, 2009).

⁴⁸ See *State v. Interstate Amiesite Corp.*, 297 A.2d 41, 44 (Del. 1972) (citing *Bar Steel Constr. Corp. v. Read*, 277 A.2d 678, 680 (Del. 1971)).

⁴⁹ *Bar Steel*, 277 A.2d at 680 (“By reason of the express agreement of the parties, the situation is controlled by the indemnification clause upon which [the insurance carrier’s] cause of action is based. It follows that the case is not governed by the Workmen’s Compensation Law. Such agreement and result are not contrary to public policy, especially when, as here, the position and rights of the employee and his widow were not changed thereby.”).

⁵⁰ *Id.* at 679.

Similar dissimilarities run throughout Bristow/AL's cited cases: *Diamond State Tel. Co. v. Univ. of Del.*,⁵¹ *Powell v. Interstate Vendaway, Inc.*,⁵² and *Howard, Needles, Tammen & Bergendoff v. Steers, Perini & Pomeroy*.⁵³ They are each so factually, legally, or otherwise significantly distinct from this case, that they provide little guidance for the Court and minimal aid to Bristow/AL's cause. In both *Diamond* and *Powell*, the Court was asked to read implied indemnification agreements into contracts where no such express language was present, but did not.⁵⁴ In *Powell* the Court explained that express indemnification without "crystal clear and unequivocal" language covering the indemnitee's own negligence, even in an express indemnification agreement, was unenforceable.⁵⁵ In *Howard*, the Court refused to extend indemnification by implication when an express indemnification clause was present but failed to provide the requested coverage.⁵⁶ Recognizing the marked distinctions between the above cases and the present matter when it issued the Opinion now under reconsideration, the Court was then and is now unable to read them as requiring relief for Bristow/AL.

⁵¹ 269 A.2d 52 (Del. 1970).

⁵² 300 A.2d 241 (Del. Super. Ct. 1972).

⁵³ 312 A.2d 621 (Del. 1973).

⁵⁴ *Diamond*, 269 A.2d at 58-59; *Powell*, 300 A.2d at 243-44 (internal citation omitted).

⁵⁵ *Powell*, 300 A.2d at 245-46.

⁵⁶ 312 A.2d at 624.

The Court instead applied our Supreme Court's last word on the subject, *Precision Air, Inc. v. Standard Chlorine of Delaware, Inc.*,⁵⁷ noting that:

An employer, even though it has paid workmen's compensation benefits to an injured employee, can be held contractually liable to a third party where a contract between the employer and third party contains provisions requiring the employer to: (1) perform work in a workmanlike manner; **and** (ii) indemnify the third-party-indemnitee for any claims arising from the employer-indemnitor's own negligence.⁵⁸

According to Bristow/AL there was a question left unanswered by *Precision Air*: is the above exception the *only* permissible exception to the exclusivity provision of the workers' compensation statute when a contractual indemnification clause is present, or is it merely *one possible* exception? After examining the history of the workers' compensation statute, the history of its exceptions, and reading the emphatic language used in *Precision Air*, this Court adopted the former interpretation. Applying the *Precision Air* construct of the exception strictly to the present matter, the Court found that Bristow/AL was unable to satisfy even the first condition, and therefore the exception was not applicable. Specifically, the Court held:

Here, the employer, RLC, did not provide services. Rather, RLC contracted for Bristow/AL to provide services. Thus there was no promise, express or implied, by RLC to provide services in a workmanlike manner, a condition precedent to invoking the narrow

⁵⁷ 654 A.2d 403 (Del. 1995).

⁵⁸ *Laugelle*, 88 A.3d at 119 (quoting *Precision Air*, 654 A.2d at 407) (emphasis in original).

exception. While Delaware's exclusive remedy bar does not invalidate the indemnification clause in its entirety, it bars Bristow/AL from recovering under that clause for claims originally brought by an RLC employee to whom RLC has paid workers' compensation.⁵⁹

On motion for reargument, Bristow/AL argued that the Court misinterpreted the *Precision Air* holding, improperly reading a bright-line rule for all third party indemnification claims. Much of Bristow/AL's motion appears to rest, however, on a disagreement with the reasoning underpinning the *Precision Air* decision rather than this Court's opinion.⁶⁰ Bristow/AL further argues that as *Precision Air* favorably cites to *Bar Steel*, absent any express intent to reverse *Bar Steel*, the broad holding contained therein is controlling law here.⁶¹ Assuming the continued viability of *Bar Steel*, as the Court has, however, gains Bristow/AL little.

In *Bar Steel*, the indemnitee-employer tendered the workers' compensation payment to the employee's heirs, and then sought to recoup payment from the

⁵⁹ *Id.* at 120.

⁶⁰ See Defs./Third-Party Pltfs.' Motion for Reargument, at 3 (“[*Bar Steel*], a case cited substantively in *Precision Air*, an express agreement to indemnify, in and of itself, is sufficient to overcome the exclusivity provisions of the Workers' Compensation law”; “Moreover, the cases cited within the *Precision Air* opinion, where Delaware courts did require a showing that the indemnitor promised to perform work in a workmanlike manner, were cases in which **there was no explicit agreement to indemnify between the parties**, and the indemnitees were asserting claims pursuant to implied promises to indemnify by virtue of the indemnitors' promises to perform certain work”; “[N]either the [*SW (Delaware), Inc. v. American Consumers Indus., Inc.*, 450 A.2d 887 (Del. 1982)], *Howard*, nor *Diamond State* case holds that an indemnitee must demonstrate an explicit agreement to indemnify **and** an express or implied promise for the employer to perform work in a workmanlike manner to seek indemnity from a plaintiff's employer.”) (emphasis in original).

⁶¹ See *Precision Air*, 654 A.2d at 408.

indemnitor-subcontractor.⁶² Presently, in contrast, it was RLC, the *indemnitor*-employer, who compensated the employee's heirs; Bristow/AL, the *indemnatee*-subcontractor is now seeking indemnification from RLC. So unlike *Bar Steel*, the potentially blameless indemnitor has been forced to make payment to an employee in order to satisfy § 2304, and will now be required to pay the (allegedly) negligent indemnatee because, in Bristow/AL's view, it would, under the agreement, never face liability. In short, Bristow/AL says RLC must first make its required payment under § 2304, and instead of being absolved of further liability, then must also assume any outstanding liability that Bristow/AL might incur. This goes beyond the Supreme Court's holding in *Bar Steel* and finds no clear support in Delaware law. Bristow/AL does not satisfy either test articulated by our courts—*Bar Steel* or *Precision Air*—and therefore summary judgment in favor of RLC was properly granted on the indemnification claim.

C. RLC'S CLAIMS THAT ITS DUTIES WERE TERMINATED UPON TRANSFER OF ACCIDENT HELICOPTER OR TERMINATION OF THE TSA HAVE NO MERIT.

RLC contends that it owes no duty to insure or defend Bristow/AL as the accident helicopter was transferred to RLC's Part 135 Air Carrier Certificate prior to the crash, and therefore under the terms of the TSA, the TSA's provisions—

⁶² *Bar Steel*, 277 A.2d at 679.

including the defense and insurance obligations—were no longer applicable.⁶³ Alternatively, RLC argues that the TSA terminated, pursuant to Section 4.02, six months after the closing date of the APA, or April 30, 2009. After this date, RLC says, all RLC’s duties under the TSA are terminated. So, because Bristow/AL failed to tender a claim by April 30, 2009, its right to do so had expired.

Delaware adheres to the “‘objective’ theory of contracts, *i.e.* contract construction should be that which would be understood by an objective, reasonable third party.”⁶⁴ When interpreting a contract, “[c]lear and unambiguous language . . . should be given its ordinary and usual meaning.”⁶⁵ A court must “read a contract as a whole and . . . give each provision and term effect, so as not to render any part of the contract mere surplusage.”⁶⁶ Where, as here, a party attempts to impart meaning to a contractual provision different than its plain meaning, the Court looks to “not what the parties to the contract intended it to mean, but what a reasonable person in the position of the parties would have thought it meant.”⁶⁷

⁶³ RLC further contends that its duty to indemnify Bristow/AL is limited by the transfer of the accident aircraft and the termination of the TSA. As the Court determined that RLC owes no indemnification obligation on an alternative basis, RLC’s claims as they relate to indemnification are moot.

⁶⁴ *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (internal citation omitted).

⁶⁵ *Rhone-Poulenc Basic Chems. Co. v. American Motorists Ins. Co.*, 616 A.2d 1192, 1195 (Del. 1992) (internal citation omitted).

⁶⁶ *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396-97 (Del. 2010).

In support of its claim that the transfer of the accident aircraft to RLC's Part 135 Air Carrier Certificate eliminates RLC's obligations to insure and defend Bristow/AL, RLC directs the Court to TSA Sections 1.01 and 1.02. Section 1.01 states that "Aircraft Business shall be reduced from time to time in accordance with Section 1.02 as and when Purchased Aircraft are transferred to [RLC's] Part 135 Air Carrier Certificate." Upon transfer of the aircraft from Bristow/AL's Part 135 Certificate to RLC's Part 135 Certificate, Section 1.02 provides:

Th[e] authority [to conduct Aircraft Business, operate routes and generally conduct flight and maintenance operations], the appointment of [Bristow/AL] pursuant to Section 1.01, and the provisions of th[e TSA], shall continue with respect to each of the Purchased Aircraft until such Purchased Aircraft is transferred to [RLC's] Part 135 Air Carrier Certificate and Operations Specifications. Thereafter, [RLC] shall have Operational Control over such Purchased Aircraft and th[e TSA] shall not apply to such Purchased Aircraft.

RLC refers to these sections as support for its claim that, upon transfer of the accident helicopter to its own Part 135 Certificate, the TSA's obligations of defense and insurance no longer applied. Section 1.01 defines "Aircraft Business" as "the conduct of flight and maintenance operations as a Part 135 Air Carrier," however, and comports with the overall purpose of the TSA: to ensure that RLC could operate the aircraft purchased from Bristow/AL during the time it took for them to be transferred to RLC's Part 135 Certificate. Notably, the sections of the TSA that pertain to the duty to insure and defend contains no comparable

⁶⁷ *Rhone-Poulenc*, 616 A.2d at 1196.

limitation. Section 5.02(a) instead requires that RLC “be responsible for and hold harmless and indemnify [Bristow/AL] from and against *all claims, demands and causes of action*” without any limitation for aircraft once transferred. And Section 6.02, similarly, places minimum levels of insurance, and includes no provision for a pro rata deduction in required coverage upon transfer of aircraft to RLC.

RLC’s position ignores precisely what conduct is being alleged by the Laugelles, and therefore misconstrues the scope of the defense and insurance coverage Bristow/AL seeks. The Laugelles only allege negligence and breach of warranty by Bristow/AL during the time that Bristow/AL owned or had similar responsibility for the helicopter, from 2001 until November 2008⁶⁸—a time period before the accident helicopter was transferred to RLC. Even if, as RLC claims, the transfer of that helicopter to RLC eliminated any obligation to defend or insure from conduct occurring after the date that it was transferred, such obligations as arose from conduct preceding the transfer would not be eliminated. The TSA’s obligations to insure and defend, therefore, were applicable to conduct and a time period alleged in the Complaint, and unaffected by the transfer of the accident helicopter to RLC’s Part 135 Certificate.

Similarly, the natural termination of the TSA on April 30, 2009 does not serve as a bar to Bristow/AL’s claims. As with RLC’s contentions concerning the

⁶⁸ See Complaint, ¶¶ 39, 144-64.

transfer of the accident helicopter, the natural termination of the TSA merely prevents the accrual of any new grounds for a claim under the TSA after the date of the TSA's expiration. It does not affect the validity of claims that arose from conduct occurring during the TSA's active period.

1. As RLC Had a Duty to Defend and Insure Imposed by the TSA, the “In Connection Herewith” Provision Does Not Bar Bristow/AL's Claims.

RLC separately alleges that the “in connection herewith” language of Section 5.02(a) serves as a bar to Bristow/AL's claim of a duty by RLC to defend, as this language necessarily contemplates duties of RLC to Bristow/AL under the TSA that do not exist.⁶⁹ In interpreting the contractual language, the Court must apply the plain and ordinary meaning of its words as they would be understood by a third-party in the present parties' shoes.⁷⁰ Viewed plainly, this provision provides a duty for RLC to defend Bristow/AL for claims or causes of actions that arise out of an action or obligation provided for by the TSA and brought by or on behalf of an employee or personnel of RLC. All of these requirements have been met, and therefore the obligation to defend is applicable from the time period the parties entered into the TSA.

⁶⁹ “Except for claims relating to damage to or loss of property, which shall be governed by Section 5.01, [RLC] shall be responsible for and hold harmless and indemnify [Bristow/AL] from and against all claims, demands and causes of action of every kind and character arising in connection herewith brought by or on behalf of any employee or personnel of [RLC], on account of bodily injury, death or damage to property.” TSA § 5.02(a) (emphasis supplied).

⁷⁰ See *Rhone-Poulenc*, 616 A.2d at 1195-96.

The Laugelles allege (1) negligence and breach of warranty in the maintenance of the accident helicopter, and (2) failure to warn of malfunctions relating to the airworthiness of the accident helicopter. These allegations are directly related to the obligations of Bristow/AL imposed by the TSA, and therefore are “in connection herewith” for purposes of RLC’s obligation to defend.⁷¹ The action was brought by Joseph Laugelle’s estate on his behalf, thereby satisfying Section 5.02(a)’s final requirement. Therefore, the “in connection herewith” language is satisfied, and does not bar Bristow/AL’s claim of a duty by RLC to defend.

D. BRISTOW/AL HAS INCURRED THE REQUISITE DAMAGES TO DEMONSTRATE *PRIMA FACIE* CLAIM OF BREACH OF CONTRACT.

RLC contends that Bristow/AL has failed to allege damages suffered as a result of RLC’s alleged breach of the TSA, a required element under Delaware law to sustain an action for breach of contract. As the harm to be prevented from the contractual insurance and defense provisions was, in part, the attorneys’ fees that

⁷¹ Under the Section entitled “Operator’s [Bristow/AL’s] Agreements,” the TSA requires the following: “[Bristow/AL] shall perform its standard and customary duties consistent with Operational Control of the Aircraft Business, as well as the following:

...

- (b) supervise the performance of the flight and maintenance aspects of customer contracts;
- (c) use good faith efforts to perform all required maintenance and make all repairs and changes to the extent required” TSA § 2.02.

Bristow/AL has incurred, there has been a sufficient claim of damages to demonstrate a *prima facie* claim of breach of contract.

Under Delaware law, a party claiming a breach of contract must demonstrate three elements: (1) the existence of a contractual obligation, express or implied; (2) a breach of that obligation; and (3) resulting damages to the party.⁷² Delaware applies the American Rule for the award of attorneys' fees, whereby each party must generally pay its own costs. Courts will recognize an exception, and shift costs, only upon the showing of a statutory exception or bad faith.⁷³ Here, however, the attorneys' fees being sought are not in response to bad conduct by the opposing party, or upon the receipt of a favorable decision. Rather, the attorneys' fees incurred by Bristow/AL were a harm sought to be avoided by the defense and insurance provisions. One obvious purpose of the defense and insurance provisions was to insulate Bristow/AL from incurring the attorneys' fees in any underlying litigation. By incurring these fees, Bristow/AL suffered the very damages that it contracted to avoid. Bristow/AL has adequately alleged such damages in its briefing, and therefore has satisfied its required showing of a *prima facie* claim for breach of contract.

⁷² *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 612 (Del. 2003); *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 140 (Del. Ch. 2003); *Spanish Tiles, Ltd. v. Hensey*, 2005 WL 3981740, at *3 (Del. Super. Ct. March 30, 2005).

⁷³ *See Johnston v. Arbitrium (Caymen Islands) Handels AG*, 720 A.2d 542, 545-46 (Del. 1998).

IV. MOTION TO SEVER CLAIMS DENIED.

On March 28, 2014, the Court vacated a previous order that denied as moot⁷⁴ the Laugelles' motion in limine to sever Bristow/AL's and RLC's cross-complaints, and took the issue under advisement pending resolution of Bristow/AL's motion for reargument. As the claims and issues required to be decided in order to resolve the third-party action between Bristow/AL and RLC are not sufficiently distinct from the underlying litigation, severance is not appropriate.

Under Superior Court Civil Rule 42(b), the Court in order to “avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any . . . third-party claim.”⁷⁵ Severance may not be appropriate when the same witnesses or documents are required for both actions, or if “[s]eparation of the cases for trial would require duplication, double expense and would not be conducive to the expedition of the trial and economy.”⁷⁶

In order to determine the extent of RLC's obligations to Bristow/AL, the scope of (alleged) liability of Bristow/AL attributable to TSA's effective period must be separately determined. The Laugelles allege negligence by Bristow/AL for the entire period of ownership of the accident helicopter—2001 to November

⁷⁴ Dkt #652; Trans. I.D. #55067702.

⁷⁵ Super. Ct. Civ. R. 42(b); *Wallace v. Keystone Ins. Grp.*, 2007 WL 884755, at *1 (Del. Super. Ct. March 22, 2007).

⁷⁶ See *Beebe Medical Ctr., Inc. v. Bailey*, 913 A.2d 543, 548 (Del. 2006) (quoting *Union Mut. Life Ins. Co. v. Dewey*, 270 A.2d 833, 834 (Del. Super. Ct. 1970)).

2008⁷⁷—a period far larger than the life of the TSA. And, there is little doubt, given the Court’s understanding of the Laugelle’s claims, that the critical period in the service history of the accident helicopter is the few months before the crash. To the extent that liability may need to be apportioned between the spans before the TSA and during the TSA’s effective time period, this potential determination is inexorably linked to the claims and issues in the underlying litigation. Consequently, the third-party claims should not be severed from the underlying litigation.

V. CONCLUSION

Upon the consideration of Defendant/Third-Party Plaintiffs, Bristow Group, Inc./Air Logistics, LLC’s Motion for Reargument, for the reasons set forth herein and in the Court’s February 27, 2014 Opinion, Third-Party Defendant, Rotorcraft Leasing Company, LLC’s, Motion for Summary Judgment is **GRANTED** on the claim of obligation to provide indemnification. Bristow/Air Logistics’s Motion for Summary Judgment on the claims of breach of contract for failure to provide

⁷⁷ Complaint, ¶ 39.

insurance coverage and the failure to defend is **GRANTED**. Plaintiffs' Motion in Limine to Sever the Cross-Claim Litigation between Bristow/Air Logistics and Rotorcraft Leasing Company is **DENIED**.

IT IS SO ORDERED.

/s/ Paul R. Wallace

Paul R. Wallace, Judge

Original to Prothonotary
cc: Counsel via File & Serve