

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

GEIGER EXCAVATING, INC.)
)
Plaintiff,)
v.)
)
ECLIPSE AVIATION CORPORATION)
)
Defendants.)

1:08CV0164 PPS
Case No. _____

2008 JUL -8 PM 3:15
STEPHEN R. LUDWIG, CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

FILED

NOTICE OF REMOVAL

COMES NOW the defendant, Eclipse Aviation Corporation, by counsel, Rothberg Logan & Warsco LLP, and in support of this Notice of Removal, states as follows:

1. Attached hereto as Exhibit "A" are the process, pleadings, and orders in the action styled *Geiger Excavating, Inc. v. Eclipse Aviation Corporation*, pending in the Allen Superior Court under Cause No. 02D01-0806-PL-281.
2. On or about June 12, 2008, defendants were served with the plaintiff's complaint by certified mail.
3. As shown by the allegations in the complaint, the plaintiff is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at 811 Airport North Office Park, Fort Wayne, Indiana 46825. The defendant, Eclipse Aviation Corporation, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 2503 Clark Carr Loop SE, Albuquerque, New Mexico, 87106. As such, the parties are of diverse citizenship.

4. Because the amount in controversy exceeds \$75,000.00, and the parties are of diverse citizenship, this Court would have original jurisdiction over this claim pursuant to 28 U.S.C. §1332. Therefore, this action is properly removable pursuant to 28 U.S.C. §1441.

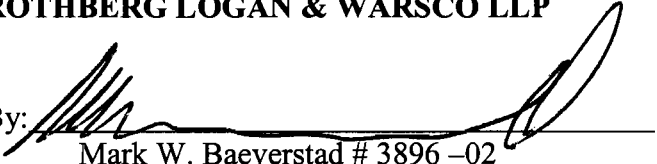
5. Pursuant to 28 U.S.C. §1391(a), venue properly lies in the Northern District of Indiana because the Northern District is a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

WHEREFORE, defendant, Eclipse Aviation Corporation, by counsel, respectfully requests that the Court accept jurisdiction of this action and notify Allen Superior Court that removal has been permitted.

Respectfully submitted,

ROTHBERG LOGAN & WARSCO LLP

By:



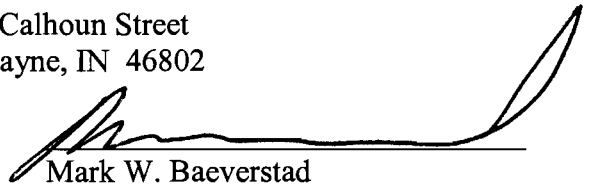
Mark W. Baeverstad # 3896 -02
110 West Berry Street, Suite 2100
Fort Wayne, Indiana 46802
Phone: 260/422-9454 Fax 260/422-1622

CERTIFICATE OF SERVICE

This will certify that on the 8 day of July, 2008, a true and complete copy of the above and foregoing was mailed to:

Craig R. Patterson
Ragna M. Urberg
200 E. Main Street, Suite 800
Fort Wayne, IN 46802

Clerk of the Allen Superior Court
201 Courthouse
715 S. Calhoun Street
Fort Wayne, IN 46802




Mark W. Baeverstad

_____ publication

CERTIFIED MAIL

I hereby certify, as indicated in the date issued field, that a copy of this was sent to the named person at the address furnished, by registered/certified mail at Fort Wayne, Indiana, return receipt requested.

I hereby certify that service by registered/certified mail at Fort Wayne, Indiana was document attempted as required by law to the person and address stated on the return receipt attached; and that service ___ was/___ was not made, according to the information contained therein.

Date Issued: JUN 12 2008
 M.S.
Clerk of Allen Circuit and Superior Courts

Date Returned: _____

Clerk of Allen Circuit and Superior Courts

ADMISSION OF SERVICE

I received a copy of this document on this date _____ and at this location: _____

Signature of Party Relationship (if not the within named person)

RETURN OF SERVICE BY SHERIFF OR OTHER OFFICER

Enter the alphabetical letter in the space provided to indicate the type of service.

I served a copy of this document as specified: ()

READING / delivering a copy (A) to the within named party;

LEAVING A COPY for the within named party

(B) with the spouse, named:

(C) with a relative, named:

(D) at the residence, located at:

(E) with the employer, named:

(F) with a secretary, named:

(G) with the attorney, named:

(H) with this person (other - specify):

* Specify name of person, work supervisor, place of business, or location where copy was left.

and (if applicable) by sending a copy of this document by first-class mail to the last known address of the within named person as indicated:

Last Known Address of Person Named in the document (or Change of Address)

I did not serve a copy of this document because: ()

(I) the party was NOT FOUND/NO SUCH ADDRESS.

(J) the document EXPIRED.

(K) the party AVOIDED service.

(L) the party REFUSED service.

(M) the party was NO LONGER EMPLOYED at that address.

(N) the document was RETURNED by the authority of the plaintiff.

(O) the party is DECEASED.

(P) the party was UNKNOWN AT THAT ADDRESS.

(Q) the party was on SICK LEAVE/LAY OFF.

(R) the party was on VACATION.

(S) the party was NOT FOUND/VACANT.

(T) the party was NOT FOUND/MOVED.

(U) the party was NOT FOUND IN THIS BAILIWICK.

(V) INSUFFICIENT ADDRESS OR INFORMATION WAS GIVEN.

(W) they are NO LONGER IN BUSINESS.

(X) several attempts were made/UNABLE TO SERVE.

(Y) of the following reason (OTHER - specify):

I AFFIRM, UNDER THE PENALTY OF PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE.

Date Served/Attempted Time Served/Attempted

Signature of Sheriff of Allen County, Indiana (or other Officer)
(or other Officer)

(Printed Name of Process Server)

By: _____
(Signature of Process Server)

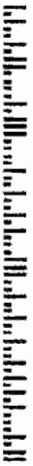
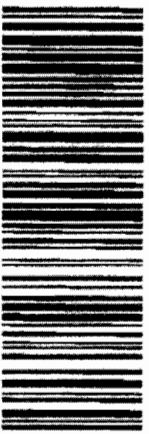


TERESE M. BROWN
ALLEN COUNTY CLERK OF COURTS
ROOM B10
113 W BERRY ST
ORT WAYNE, IN 46802-2324

First Class Parcel
DMM 503 9.2.2

dpl-08-281 6/12 ms

ELECTRONIC SCAN REQUIRED

FCM	
USPS FIRST-CLASS MAIL®	
TERESE M. BROWN ALLEN COUNTY CLERK OF COURTS ROOM B10 113 W BERRY ST FORT WAYNE, IN 46802-2324	
SHIP ECLIPSE AVIATION CORP TO: C/O CORPORATION SERVICE CO 251 E OHIO ST STE 500 INDIANAPOLIS, IN 46204-2184 	
e/USPS SIGNATURE CONFIRM  9121 8052 1390 7164 4424 63	
Electronic Rate Approved #805213907	

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on Route #C035
This piece is being
monitored for Delivery
and Scanning accuracy.



Non-Machinable
Parcel

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

IN THE ALLEN SUPERIOR COURT

CASE NO. 02D01-0806-PL- 281

GEIGER EXCAVATING, INC.,)
)
Plaintiff,)
)
vs.)
)
ECLIPSE AVIATION CORPORATION,)
)
Defendant.)

CLERK ALLEN CIRCUIT
SUPERIOR COURT
JUL 8 2008 11:38:25
CLERK SERVICES DIVISION

COMPLAINT

Plaintiff Geiger Excavating, Inc. ("Geiger"), by counsel, for its Complaint against Defendant, Eclipse Aviation Corporation ("Eclipse"), alleges as follows:

1. Plaintiff Geiger Excavating, Inc., is an Indiana corporation with its principal place of business at 811 Airport North Office Park, Fort Wayne, Indiana 46825.
2. Upon information and belief, Defendant, Eclipse Aviation Corporation, is a Delaware corporation with its principal place of business at 2503 Clark Carr Loop SE, Albuquerque, New Mexico 87106.
3. Upon information and belief, Eclipse is a corporation which does business throughout the United States, including the State of Indiana.
4. On October 10, 2000, Geiger and Eclipse entered into an Escrow Agreement and a Deposit Agreement, true and accurate copies of which are attached to this Complaint as Exhibits "A" and "B" respectively.
5. The Deposit Agreement secured a guaranteed delivery position of an Eclipse 500 jet to Geiger in exchange for a deposit.

6. To date, Geiger has paid to Eclipse, a total of \$150,000 in deposits pursuant to the Deposit Agreement.

7. The Deposit Agreement contains a provision permitting Geiger to cancel the Deposit Agreement and obtain a refund of its deposits "if FAA Part 23 certification of the Eclipse 500 jet occurs after June 30, 2004."

8. Eclipse did not obtain the necessary FAA certification until late 2006.

9. The Deposit Agreement provides that Eclipse and Geiger will enter into a Purchase Agreement for the Aircraft 180 days prior to delivery and that upon execution of the Purchase Agreement, Geiger must pay 60% of the final delivery price less its \$150,000 deposit.

10. On April 11, 2008, Eclipse sent a letter to Geiger advising that unless Geiger paid an invoiced amount of \$773,762.40 by April 18, 2008, Eclipse will consider Geiger in default of the Deposit Agreement and will retain, as liquidated damages, Geiger's \$150,000 deposit.

11. Eclipse's demand was based on an anticipated delivery date in September 2008.

12. Prior to April 18, 2008, Geiger confirmed with Eclipse that the anticipated delivery date had been moved back to October/November 2008. Despite this, Eclipse refused to change the due date of the invoiced amount to be in compliance with the Deposit Agreement.

13. On April 18, 2008, Geiger, in compliance with the Deposit Agreement and given Eclipse's actions, demanded a full refund of its \$150,000.00 deposit.

14. Despite demand, Eclipse has refused to refund Geiger's \$150,00.00 deposit.

15. Under the terms of the Deposit Agreement, the triggering event for the payment of the invoice (execution of a Purchase Agreement) has not occurred, thereby rendering Eclipse's April 11, 2008 notification to Geiger improper under the Deposit Agreement.

16. In addition, based on the actual scheduled delivery date, Eclipse's demand for payment was premature and thus Eclipse breached the Deposit Agreement.

17. Eclipse's improper demand for payment from Geiger constitutes a material breach of the Deposit Agreement.

18. The Deposit Agreement contains a provision permitting Geiger to cancel the Deposit Agreement and obtain a refund of its deposits "if FAA Part 23 certification of the Eclipse 500 jet occurs after June 30, 2004."

19. Eclipse did not obtain the necessary FAA certification until late 2006.

20. On April 18, 2008, Geiger properly exercised its right to a refund of its \$150,000.00 deposit.

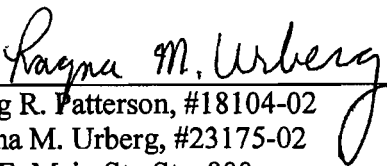
21. Eclipse has not refunded Geiger's \$150,00.00 deposit.

22. Eclipse's refusal to refund Geiger's \$150,000.00 deposit constitutes a material breach of the Deposit Agreement.

23. As a result of Eclipse's material breaches of the Deposit Agreement, Geiger has suffered damages in the amount of \$150,000.

WHEREFORE, Plaintiff, Geiger Excavating, Inc., by counsel, respectfully requests that the Court enter a judgment in its favor and against Defendant, Eclipse Aviation Corporation, in the amount of \$150,000; that the Court award Plaintiff pre-judgment interest; that the Court award the Plaintiff the costs of bringing this matter; and, that the Court award Plaintiff all other relief that is just and proper.

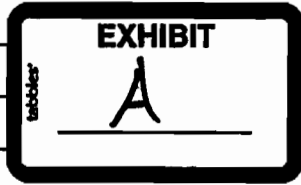
BECKMAN LAWSON, LLP

BY: 
Craig R. Patterson, #18104-02
Ragna M. Urberg, #23175-02
200 E. Main St., Ste. 800
Fort Wayne, Indiana 46802
Telephone: (260) 422-0800
ATTORNEYS FOR PLAINTIFF
GEIGER EXCAVATING, INC.

ESCROW AGREEMENT SIGNATURE PAGE EXHIBIT A

Buyer Name: _____

Wiring Bank: _____



Address: _____

Date Wire Transfer Sent: _____

Account Name: _____

Account Number: _____

1. STERLING LEVEL DEPOSIT

The Sterling Level Deposit consists of two equal payments of Thirty Seven Thousand Five Hundred Dollars (\$37,500) each. The first payment (the "First Deposit") is due upon execution of the Sterling Level Deposit Agreement and this Escrow Agreement Signature Page. The second payment (the "Second Deposit") is due within four (4) business days following the first flight of the Eclipse 500 jet (currently scheduled for June, 2002). The First and Second Deposit must be sent directly to Escrow Agent at Escrow Agent's address set forth in Section 5, or via the wire transfer instructions below.

- ◆ Send a copy of this Signature Page (Exhibit A) to Escrow Agent.
- ◆ Return this Signature Page (Exhibit A) and your signed Sterling Deposit Agreement to Eclipse Aviation.

2. DEPOSIT PAYMENTS

Deposits must be in United States dollars and may be paid by (1) check or money order, or (2) wire transfer. Please select your payment method below, and follow the instructions for that method:

3. SIGNATURE

For your Sterling Level reservation to be effective, you must (1) complete and return this Signature Page (Exhibit A), signed with today's date, to Eclipse, and (2) complete and return your signed Sterling Deposit Agreement, to Eclipse, and (3) pay the Deposit as instructed above. Upon doing so, you become bound to this Agreement and subject to its terms and conditions. If you are unsure about any of the terms of this Agreement, Eclipse encourages you to consult with legal counsel. Eclipse personnel do not have the authority to modify, amend or waive any term of this Agreement. You should keep a copy of this Agreement (including this Exhibit A) for your personal files. The original Deposit Agreement and Exhibit A will be returned to you following execution and registration by Eclipse.

Check or Money Order.

- ◆ Make your check or money order payable to "Wells Fargo Bank New Mexico, N.A. - Corporate Trust Services,"
- ◆ Reference "Eclipse Aviation Corporation" on your check or money order,
- ◆ Send check or money order with a copy of this Signature Page (Exhibit A) to Escrow Agent,
- ◆ Return this Signature Page (Exhibit A) and your signed Sterling Deposit Agreement to Eclipse Aviation.

BUYER:

Signature: Jay Geiger / Geiger Excavating Inc.

Name: JAY GEIGER

Today's Date: 10/1/2000 (the "Effective Date")

Address: 6206-B CONSTITUTION DR
FORT WAYNE IN 46804

Wire Transfer

- ◆ Wire your Deposit in accordance with the following wire transfer instructions:

Bank: Wells Fargo Bank, Minnesota, N.A.

ABA No.: 091000019

Credit AC: #0001038377
Corporate Trust
Clearing Account

FBO: Eclipse Account #10229000

Fax Number: (219) 459-6034

If Buyer is not an individual person, please provide the name and title of the person signing on behalf of Buyer. By doing so, the individual signing is representing and warranting that he or she has the authority to enter into this Agreement on behalf of Buyer.

Name: Jay Geiger / Geiger Excavating Inc.

Title: President

- ◆ Provide the information below for financial institution from which funds have been wired OR attach a copy of your financial institution's wire instructions:

ECLIPSE AVIATION STERLING LEVEL DEPOSIT AGREEMENT

EXHIBIT

tabbles
B

This Eclipse Aviation Sterling Level Deposit Agreement ("Agreement") is made and entered into on the date listed below, between Eclipse Aviation Corporation, ("Eclipse"), and the undersigned ("Buyer"). Buyer desires to buy, and Eclipse wishes to sell an Eclipse 500 jet, following FAA certification of the aircraft. This Agreement is subject to the terms and conditions contained herein, and execution of the Escrow Agreement (signature page, Exhibit "A" attached). This Agreement secures a guaranteed delivery position in the Sterling Level program. Buyer may enter into additional Agreements, in order to reserve additional aircraft. Guaranteed delivery positions are issued on a first-come, first-served basis. This Agreement is not an Aircraft Purchase Agreement. The Sterling Level Deposit Program is subject to withdrawal at any time, at the sole discretion of Eclipse. Based upon the foregoing, Eclipse and the Buyer (also referred to as the "Parties"), desiring to be legally bound, agree as follows:

1. Buyer shall place Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) ("First Deposit") in an escrow account for purchase of one Eclipse 500 jet (also referred as "Aircraft");
2. The List Price of the Aircraft, is in June, 2000, dollars. The Guaranteed Performance Specifications, and the Standard Equipment List are set forth in the "Performance Specifications and Equipment List" on page 2 of this brochure. The List Price does not include the price of Optional Equipment, and will be subject to an Economic Price Adjustment that is based on the CPI-W;
3. The First Deposit may be made by personal check, company check, certified check, cashier's check, money order or wire transfer, in U.S. Dollars, pursuant to the terms and conditions of the Escrow Agreement;
4. Buyer shall return the Deposit Agreement and Escrow Agreement Signature Page to Eclipse, pursuant to the instructions on page 1, in order to receive a guaranteed delivery position. Eclipse will forward original Deposit Agreement and Escrow Agreement Signature Page to Buyer following execution and registration by Eclipse.
5. A copy of the Escrow Agreement Signature Page, and the deposit check or wire transfer shall be forwarded to the escrow agent, pursuant to the terms of the Escrow Agreement;
5. The escrow account shall be established in accordance with the terms of the Escrow Agreement;
6. All interest accrued on the Deposits will be paid to Eclipse;
7. Within four (4) business days following the first flight of the Eclipse 500 jet (currently scheduled for June, 2002), the Buyer shall place an additional Thirty Seven Thousand Five Hundred Dollars (\$37,500.00) ("Second Deposit") in the escrow account, in order to establish a total escrow account of Seventy Five Thousand Dollars (\$75,000.00); The Second Deposit may be made by personal check, company check, certified check, cashier's check, money order or wire transfer, in U.S. Dollars, pursuant to the terms and conditions of the Escrow Agreement;
8. Buyer can cancel Agreement, and obtain a refund of the Deposits, only if the Aircraft Final Delivery Price (see #10) exceeds List Price, published in the Sterling Level Deposit Agreement brochure, (as adjusted for CPI-W) by 5% or more, or Aircraft does not meet Guaranteed Performance Specifications or, Aircraft Standard Equipment List contains less equipment than the list of standard equipment, published in the Sterling Level Deposit Agreement brochure, or if FAA Part 23 certification of the Eclipse 500 jet occurs after June 30, 2004. Buyer must return original Deposit Agreement and Escrow Agreement Signature Page to obtain a refund;
9. Pursuant to the terms of the Escrow Agreement, within four business days following the FAA Certification Date of the Eclipse 500 jet, the Escrow Agent will disburse the Deposits to Eclipse, and the Buyer shall forward an additional Seventy Five Thousand Dollars (\$75,000.00) ("Additional Deposit") to Eclipse. The Additional Deposit may be made by personal check, company check, certified check, cashier's check, money order or wire transfer, in U.S. Dollars, and should be sent or wired directly to Eclipse;

Continued on the next page.

ECLIPSE AVIATION STERLING LEVEL DEPOSIT AGREEMENT

- continued -

- 10. Eclipse and Buyer shall enter into a Purchase Agreement for the Aircraft 180 days prior to delivery. At that time, the Final Delivery Price will be established, which includes CPI-W increases calculated to the date of delivery, and other price adjustments at the discretion of Eclipse;
- 11. The Deposits, Additional Deposit, and delivery position are non-transferable;
- 12. If, in the sole discretion of Eclipse, there is a cause beyond the Buyer's control that prevents the buyer from funding the Second Deposit or Additional Deposit, then Eclipse will refund any Deposits, less a \$2,500 cancellation fee, that have been paid to Eclipse.
- 13. 60% of the Final Delivery Price, plus the price of Optional Equipment of the Aircraft, will be due upon execution of the Purchase Agreement, and the Deposits, and Additional Deposit will be credited toward the Final Delivery Price plus the price of Optional Equipment;
- 14. The remaining 40% of the Final Delivery Price, plus the price of Optional Equipment, will be due upon delivery;
- 15. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement;
- 16. Eclipse and Buyer agree that facsimile and photocopy signatures may be utilized in the execution of this Agreement;
- 17. This Agreement may be amended or varied only by documents, in writing, executed by Eclipse and Buyer; and,
- 18. This Agreement shall be interpreted and governed by the laws of the State of New Mexico.

SIGNATURES & BUYER INFORMATION

Dated: 10/10/00

Eclipse Aviation Corporation

By: Dottie Hall

Print Name: Dottie Hall

2503 Clark Carr Loop SE
Albuquerque, NM 87106



ECLIPSE
AVIATION

Buyer: GEIGER EXCAVATING INC.

By: Jay Geiger

Print Name: JAY GEIGER

Address: 6206-B CONSTITUTION DR.
FORT WAYNE IN 46804

Phone: 219-~~672~~ 459-2005

Fax: 219-459-6034

Email: GEIGER.EX@WORLDNET.ATT.NET

Customer Number: S0058

(to be assigned by Eclipse Aviation)