IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY

RAYTHEON AIRCRAFT CO., Plaintiff,	
v.	Case No. 05-2328 JWL
UNITED STATES OF AMERICA, Defendant .	

FIRST AMENDED ANSWER

On July 28, 2005, Plaintiff Raytheon Aircraft Co. ("Raytheon" or "Plaintiff") filed suit against the United States of America (the "United States" or "Defendant"). The United States moved for dismissal of various counts, and the Court dismissed Plaintiff's Count I, III, IV, and V. On June 29, 2007, Raytheon moved this Court to reconsider its May 26, 2006 Order dismissing Count I of Plaintiff's Complaint. The Court reinstated Count I of the Complaint on July 25, 2007 and set August 24, 2007 as the date by which the United States was required to answer. Accordingly, the United States submits this First Amended Answer.

COME NOW Defendant United States of America, and in response to Plaintiff's Complaint, hereby admit, deny, and aver as follows:

NATURE OF THE ACTION

1. The allegations of paragraph 1 characterize Plaintiff's claim and require no response.

2. The allegations of paragraph 2 characterize portions of Plaintiff's claim that have been dismissed and require no response.

3. The allegations of paragraph 3 characterize portions of Plaintiff's claim that have been dismissed and require no response.

PARTIES

4. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 4. The allegations of the second sentence of paragraph 4 are conclusions of law to which no response is required.

5. The United States admits the allegations of the first sentence of paragraph 5. The allegations of the second and third sentences of paragraph 5 are legal conclusions to which no response is required. The fourth sentence of paragraph 5 consists of allegations that pertain to Plaintiffs' Count V which has been dismissed and requires no response. The United States admits the allegations of the fifth sentence of paragraph 5.

JURISDICTION AND VENUE

6. The allegations of paragraph 6 are conclusions of law to which no response is required.

BACKGROUND FOR COUNTS I, II, AND III

CERCLA

7. The allegations of paragraph 7 are conclusions of law to which no response is required.

8. The allegations of paragraph 8 are conclusions of law to which no response is required.

9. The allegations of paragraph 9 are conclusions of law to which no response is required.

10. The allegations of paragraph 10 are conclusions of law to which no response is required.

11. The allegations of paragraph 11 are conclusions of law to which no response is required.

The United States' Operations at the Site

12. The United States admits that it began construction of the Site in September 1942 and that it operated the Site as Herington Army Airfield ("HAAF") from 1943 through 1945 as part of the war effort. The United States denies it operated the Site in 1946. The United States admits that it processed crews and aircraft for deployment to the war theaters of operations from HAAF.

13. The United States admits the allegations of paragraph 13.

14. The United States admits that the allegations of paragraph 14 include some of the improvements at HAAF.

15. The United States admits that it processed newly-manufactured B-29 aircraft that arrived at HAAF directly from Boeing's Wichita plant. The United States avers that is performed limited maintenance and equipment installation functions on new aircraft to prepare them for war deployment. The United States denies the remaining allegations of paragraph 15.

16. The United States admits that it used non-chlorinated solvents for aircraft maintenance and may have used carbon tetrachloride in fire extinguishers at HAAF during World War II. The United States specifically denies that it used trichlorethylene ("TCE") at HAAF at any time. The United States denies the remaining allegations of paragraph 16.

17. The United States denies the allegations of paragraph 17.

18. The United States admits the allegations of paragraph 18.

Beech Aircraft Company's Operations at the Site

19. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19.

20. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20.

The United States' Investigation of Environmental Contamination at the Site

21. The United States admits the allegations of paragraph 21.

22. The United States admits the allegations of paragraph 22.

23. The United States admits the allegations of paragraph 23.

The United States' Enforcement Actions at the Site

24. The United States admits that in a response to an Information Request from the Environmental Protection Agency ("EPA"), in December 1997, the United States Army Corps of Engineers ("USACE") stated that it had no evidence the Army used hazardous substances at HAAF.

25. The United States admits the allegations of the first and second sentences of paragraph 25. The United States further admits that Raytheon is required to pay for 100% of the work. The United States denies that Raytheon is required to pay 100% of oversight costs incurred by the United States.

26. The United States admits the allegations of paragraph 26.

27. The United States admits the allegations of paragraph 27.

28. The United States admits the allegations of paragraph 28.

29. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 29. The United States admits that USACE has not incurred response costs complying with the March 29, 2000 Administrative Order on Consent issued by EPA to Raytheon.

30. The United States admits the allegations of paragraph 30.

31. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 29. The United States admits that USACE has not incurred response costs complying with the November 20, 2000 Administrative Order on Consent issued by the Kansas Department of Health and the Environment to Raytheon.

The United States' Issuance of the UAO

32. The United States admits that on September 30, 2004, EPA, pursuant to 42 U.S.C. Section 106, issued a UAO to Raytheon and the City ordering Raytheon to, *inter alia*, excavate and properly dispose of TCE-contaminated soils from an insular location near Hangar 1 at the Site where, on information and belief, Raytheon's predecessor Beech Aircraft operated a TCE vapor degreaser. The United States denies the remaining allegations of paragraph 32.

33. The United States is without knowledge or information sufficient to form a belief as to the allegations of paragraph 33.

34. The United States is without knowledge or information sufficient to form a belief as to the allegations of paragraph 34.

35. The United States admits that Raytheon agreed to perform the work required in the UAO. The United States further admits that CERCLA provides for treble damages or $32,500

per day penalties under certain circumstances. The United States is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 35.

COUNT I
Cost Recovery Under CERCLA Section 107

36. The United States incorporates by reference its responses to paragraphs 1 through 35.

37. The allegations in paragraph 37 are conclusions of law to which no response is required.

38. The allegations in paragraph 38 are conclusions of law to which no response is required.

39. The allegations in paragraph 39 are conclusions of law to which no response is required.

40. The United States denies the allegations in paragraph 40 as to TCE; the United States is without knowledge or information sufficient to form a belief as to hazardous substances not related to the contamination being addressed at the Site.

41. The allegations in paragraph 41 are conclusions of law to which no response is required.

42. In response to the allegations in paragraph 42, the United States denies any liability for response costs incurred by Raytheon in connection with the Tri-County Public Airport.

COUNT II
Contribution under CERCLA

43. The United States incorporates by reference its responses to paragraphs 1 through

42.

44. The allegations of paragraph 44 characterize Raytheon's Complaint and therefore no response is required.

45. The allegations of paragraph 45 are conclusions of law to which no response is required.

COUNT III
Contribution under Federal Common Law

The allegations of paragraphs 46-50 address Raytheon's Count III, which has been dismissed by this Court. Therefore, no response is required.

COUNTS IV AND V

The allegations of paragraphs 51 - 89 address Raytheon's Counts IV and V, which have been dismissed by this Court. Therefore, no response is required.

RELIEF SOUGHT

The remainder of the Complaint constitutes the Plaintiff's prayer for relief to which no response it required. To the extent further response may be required, the United States denies that Plaintiff is entitled to the requested relief or any relief whatsoever.

GENERAL DENIAL

To the extent any allegation in the Plaintiff's Complaint has not been admitted or specifically responded to, the United States denies such allegations.

AFFIRMATIVE DEFENSES

1. Plaintiff fails to state a claim upon which relief may be granted.

2. The Complaint fails to state a claim or set forth facts sufficient to support a claim

for attorneys' fees.

3. The costs claimed by Plaintiff are not response costs incurred consistent with the National Contingency Plan, 40 C.F.R. Part 300, as required by CERCLA.

4. If the United States is found liable to Plaintiff under CERCLA, Plaintiff has no claim for joint and several liability. The United States' liability, if any, is limited to its equitable share of the necessary costs of response incurred consistent with the National Contingency Plan. Plaintiff's recovery from the United States, if any, should be reduced in accordance with the various equitable and other factors used under 42 U.S.C. §§ 9601 *et seq.* to allocate costs and damages among parties.

5. In an allocation of responsibility under CERCLA, Plaintiff should recover nothing, or less than their demand, for equitable reasons, including, but not limited to, its own conduct and liability, and considering the efforts and amounts that the United States has already expended or will expend to assist with the investigation and remediation of the alleged contamination at or near the Site.

6. To the extent that any alleged contamination at the Site attributable to the United States is divisible from other contamination at the Site, the United States is not liable for costs relating to that other contamination.

7. To the extent that Plaintiff has recovered or recovers any costs from another person or entity or from the United States under any contract or any statute other than CERCLA, Plaintiff is precluded by 42 U.S.C. § 9614(b) from receiving reimbursement for those costs from the United States under CERCLA.

COUNTERCLAIMS

While preserving all of its defenses and expressly denying that it is liable to Plaintiff for any matter set forth in the Complaint, pursuant to the provisions of Fed. R. Civ. P. 13, the United States, by and through the undersigned attorneys, asserts the following counterclaims against Plaintiff.

PARTIES

1. Defendant and Counterclaim Plaintiff is the United States of America ("United States").

2. The United States is informed and believes that Plaintiff and Counterclaim Defendant Raytheon Aircraft Company ("Raytheon") is a Kansas corporation with its principal place of business in Wichita, Kansas. The United States is informed and believes that Raytheon is the successor-in-interest to Beech Aircraft Company.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of these counterclaims pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

4. Pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), venue is proper in this district because the releases or threatened releases of hazardous substances that give rise to the claims occurred in this judicial district.

STATUTORY BACKGROUND

5. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), imposes liability for response costs on four categories of "[c]overed persons" – typically known as potentially responsible parties ("PRP").

6. PRPs are defined in CERCLA as (1) owners and operators of facilities at which hazardous substances are located; (2) past owners and operators of such facilities at the time that disposal of hazardous substances occurred; (3) persons who arranged for disposal or treatment of hazardous substances; and (4) certain transporters of hazardous substances. See 42 U.S.C. § 9607(a)(1)-(4).

7. CERCLA section 113(f)(1), 42 U.S.C. § 9613(f)(1), provides that "[a]ny person may seek contribution from any other person who is liable or potentially liable under [Section 107(a)], during or following any civil action under [Section 106] or under [Section 107(a)]." 42 U.S.C. § 9613(f)(1).

8. CERCLA section 113(f)(1), 42 U.S.C. § 9613(f)(1), further provides that contribution claims "shall be governed by Federal law," and "[i]n resolving contribution claims, the court may allocate response costs among liable parties using such equitable factors as the court determines are appropriate."

9. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever any hazardous substance is released into the environment, or there is a substantial threat of such a release into the environment, the President is authorized to act, consistent with the National Contingency Plan, to undertaken removal or remedial actions.

10. The President's authority under Sections 104(a) and (b) of CERCLA, 42 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14, 1981), reprinted in 42 U.S.C.A. § 9615 at 544-48.

11. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

"Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

(1) the owner and operator of a vessel or a facility,

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

* * *

shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan . . . ."

12. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:

"In any such action described in this subsection [an action for recovery of costs under Section 107 of CERCLA], the court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages."

GENERAL ALLEGATIONS

13. There have been releases of the hazardous substance TCE into the environment at the Tri-County Public Airport Superfund Site.

14. Counterclaim Defendant is a "person" within the meaning of CERCLA Section 101, 42 U.S.C. § 9601.

15. From approximately 1950 to the early 1960s, Beech Aircraft Company ("Beech") owned and operated facilities at the Site for the manufacture of aircraft parts and components. The operation of these facilities released hazardous substances, including the hazardous substance TCE, into the soil and groundwater in the vicinity of Hangars 1 and 4 at the Site.

16. Beech was an owner and operator of a facility at the Site at the time of the

disposal of TCE and other hazardous chemicals at the Site, within the meaning of Sections 101 and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601 & 9607(a)(2).

17. In 1980, Raytheon purchased Beech, and Beech became a subsidiary of Raytheon.

18. In 1994, Raytheon consolidated Beech and the Raytheon Corporate Jets Units to form counterclaim defendant Raytheon Aircraft Company.

19. Counterclaim Defendant is the successor to the environmental liabilities of Beech associated with Beech's ownership and operation of facilities at the Site from approximately 1950 to the early 1960's.

COUNT I

Counterclaim Against Plaintiff Under CERCLA Section 113(f)(1), 42 U.S.C. § 9613(f)(1), For Contribution

20. The United States incorporates by reference, as if fully set forth herein, Paragraphs 1 through 20 of the Counterclaims.

21. Plaintiff has filed a civil action against the United States and alleges in Paragraphs 36-42 of the Complaint a claim under CERCLA section 107(a), 42 U.S.C. § 9607(a). CERCLA section 113(f)(1), 42 U.S.C. § 9613(f)(1), authorizes the United States to seek contribution in this action.

22. The Court should allocate response costs in Plaintiffs' Complaint among liable parties using such equitable factors as the Court determines are appropriate, under 42 U.S.C. § 9613(f)(1), and grant appropriate declaratory relief under 42 U.S.C. § 9613(g)(2) and 28 U.S.C. § 2201.

COUNT II

Counterclaim Against Plaintiff Under CERCLA Section 107(a)(2), 42 U.S.C. §9607(a)(2), For Recovery of Response Costs

23. The United States incorporates by reference, as if fully set forth herein, Paragraphs 1 through 20 of the Counterclaims.

24. Counterclaim Defendant Raytheon is liable under Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), for all costs incurred by the United States in response to releases of hazardous substances at the Site.

25. As of December 31, 2006, the United States had incurred $2,942,034.09 in unreimbursed costs in response to the release of the hazardous substance TCE and other hazardous substances at the Site. These costs were for activities including, but not limited to, environmental investigations at the Site, EPA's preparation and issuance to Raytheon of an administrative order on consent ("AOC") for the provision of bottled water to area residents and a unilateral administrative order ("UAO") for the removal of TCE-contaminated soil at the Site.

REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that:

1. Plaintiff's Complaint be dismissed with prejudice.

2. Each of Plaintiff's requests for relief be denied in its entirety.

3. Any equitable apportionment conducted by the Court appropriately reflect Plaintiff's liability.

4. This Court enter a judgment of liability against counterclaim defendant Raytheon, holding it jointly and severally liable under Section 107(a)(2) of CERCLA, 42

U.S.C. § 9607(a)(2), for all unreimbursed costs incurred by the United States in response to releases of hazardous substances at the Site.

5. This Court further enter, pursuant to Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

6. The United States be awarded its costs and disbursements in this action and be granted any additional relief the Court deems just and proper under the circumstances.

Dated: August 24, 2007

Respectfully submitted,

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/s/ Mary Whittle
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CERTIFICATE OF SERVICE

I hereby certify that on this date, August 24, 2007, the foregoing was electronically filed with the clerk of the court using the CM/ECF system which will send a notice of electronic filing to the following:

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I further certify that on this date the foregoing document and the notice of electronic filing were mailed by first-class mail to the following non-CM/ECF participants:

None.

By: /s/ Mary Whittle
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