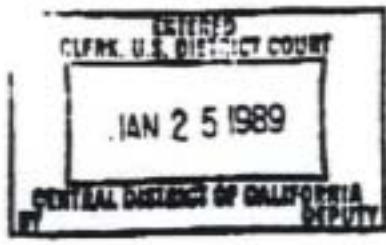


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DIFWIND FARMS LIMITED VIII,  
a California limited  
partnership, and VIKING  
WINDFARMS LIMITED 1, a  
California limited  
partnership,  
  
Plaintiffs,  
  
v.  
  
VENTILATOREN STORK HENGELO  
B.V., a Dutch corporation,  
  
Defendant.

CASE NO. CV 88-5038 MRP  
MEMORANDUM AND ORDER

DES CONSTITUTE NOTICE OF ENTRY  
AS REQUIRED BY FRCP, RULE 77(d).

On December 19, 1988, defendant Ventilatoren Stork Hengelo B.V. ("Stork") brought three motions before this Court: 1) a motion to dismiss the complaint filed by plaintiffs Difwind Farms Limited VII ("Difwind") and Viking Windfarms Limited 1 ("Viking") for lack of personal jurisdiction, 2) a motion to compel arbitration of the dispute under the Convention on the Recognition and Enforcement of Foreign Arbitration Awards, 9 U.S.C. § 206, and 3) a motion to dismiss the action on the ground forum

1 non conveniens. Having considered the oral argument and the  
2 papers filed in support of and in opposition to the motions,  
3 the Court finds that it has jurisdiction over defendant  
4 Stork, and the Court orders the parties to arbitrate their  
5 disputes. The Court need not reach defendant's Motion to  
6 Dismiss for forum non conveniens.

7 **DISCUSSION:**

8 Defendant Stork is a Netherlands corporation that  
9 manufactures windmill blades. Stork sold its blades to  
10 Nordtank A/S ("Nordtank")--a Danish windmill manufacturer--  
11 who used the blades in the wind turbine generators ("WTGs")  
12 it assembled. The contract between Stork and Nordtank  
13 included certain warranties and a provision that all  
14 disputes arising from the contract would be sent for  
15 arbitration to the International Chamber of Commerce.

16 Plaintiffs Difwind and Viking are California limited  
17 partnerships that operate windparks in California to  
18 generate electricity for sale to Southern California Edison.  
19 Plaintiffs Difwind and Viking each contracted to purchase  
20 numerous WTGs from Nordtank. Nordtank appended certain  
21 specifications for the Stork blades to the Nordtank-Difwind  
22 and Nordtank-Viking agreements; these agreements contain no  
23 arbitration clause.

24 Plaintiffs have alleged certain defects in Stork's  
25 blades, and have brought suit against it on four causes of  
26 action: 1) breach of express warranties, 2) breach of  
27 implied warranties, 3) negligence, and 4) negligent  
28



1 interference with prospective economic advantage. The  
2 complaint alleges design and manufacturing defects, as well  
3 as failure to replace or repair defective blades.

4 Defendant Stork argues that this Court does not have  
5 personal jurisdiction. If the Court does have jurisdiction,  
6 however, Stork argues that the claims must be sent to  
7 arbitration under the provision in the Stork-Nordtank  
8 contract.

9 **A. Personal Jurisdiction:**

10 A United States District Court sitting in California  
11 exercises jurisdiction to the full extent permitted by due  
12 process. Cal. Civ. Proc. Code § 410.10. Thus, Stork must  
13 have sufficient contacts with California such that the  
14 exercise of jurisdiction would not offend traditional  
15 notions of fair play and substantial justice. International  
16 Shoe Co. v. Washington, 326 U.S. 310 (1945). The Ninth  
17 Circuit has established a three part test to determine  
18 whether a court has specific jurisdiction over a defendant  
19 consistent with the requirements of due process:

- 20 (1) the nonresident defendant must purposefully  
21 direct his activities or consummate some  
22 transaction with the forum or residents  
23 thereof; or perform some act by which he  
24 purposefully avails himself of the privilege of  
25 conducting activities in the forum, thereby  
26 invoking the benefits and protections of its  
27 laws; (2) the claim must be one which arises  
28 out of or relates to the defendant's forum  
related activities; and 3) the exercise of  
jurisdiction must comport with fair play and  
substantial justice, i.e. must be reasonable.

**Federal Deposit Insurance Corporation v. British-American**

1 Insurance Company, Ltd., 828 F.2d 1439, 1442 (9th Cir.  
2 1987).

3 This Court's exercise of personal jurisdiction over  
4 Stork is consistent with all three prongs of the above test.  
5 First, plaintiffs have submitted numerous declarations  
6 evidencing the fact that Stork purposefully directed its  
7 activities to California. Stork shipped blades directly  
8 from Europe to California windparks and established  
9 facilities in the forum to repair blades. (See Declarations  
10 of Bruno Larsen, Gary Nicholson, Russ Viser and James  
11 Sorena.) Even though non-party Nordtank--not Stork--  
12 actually sold the blades to plaintiffs, Stork's activities  
13 "indicate[d] an intent or purpose to serve the market in the  
14 forum state" beyond merely placing the blades into the  
15 stream of commerce. Asahi Metal Industry Co., Ltd. v.  
16 Superior Court of California, 480 U.S. 102, 112 (1987)  
17 (Opinion of O'Connor, J.).

18 Second, plaintiffs' four state law claims arise out of  
19 defendant's forum related activities. Plaintiffs complain  
20 of defects in blades intended for use in California and of  
21 Stork's failure to repair the blades; these activities  
22 clearly relate to Stork's activities in California. See  
23 Data Disk, Inc. v. Systems Technology Associates, Inc., 557  
24 F.2d 1280, 1288 (9th Cir. 1977).

25 Third, Stork has failed to show that this Court's  
26 exercise of jurisdiction would be unreasonable. Haisten v.  
27 Grass Valley Medical Reimbursement Fund, Ltd., 784 F.2d  
28



1 1392, 1400 (9th Cir. 1986). The reasonableness of  
2 jurisdiction is an equitable inquiry, and in this case the  
3 Court finds that whatever burdens might be placed on Stork  
4 by litigating in California are substantially outweighed by  
5 the forum's interest in ensuring that products sold to  
6 California residents conform to warranted standards.

7 **B. Motion to Compel Arbitration:**

8 Defendant has moved the Court to compel plaintiffs to  
9 arbitrate, in accordance with <sup>the 1976</sup> ~~the~~ Convention on the  
10 Recognition and Enforcement of Foreign Arbitration Awards, 9  
11 U.S.C. § 206<sup>1</sup>, all the claims filed against Stork.

12 Defendant argues that the four causes of action in the  
13 complaint stem from the Stork-Nordtank sales agreement,  
14 which contains a provision requiring all disputes to be sent  
15 to the International Chamber of Commerce ("ICC") and to be  
16 settled in conformity with the ICC's Rules of Conciliation  
17 and Arbitration. Plaintiffs respond that their claims are  
18 not based on the Stork-Nordtank agreement.

19 As to the first cause of action for breach of express  
20 warranties, however, Viking and DiWind have failed to  
21 identify any express warranties other than those included in  
22 the Stork-Nordtank sales agreement.<sup>2</sup> Plaintiffs admit that  
23

24 <sup>1</sup>Section 206 states, in relevant part:

25 A court having jurisdiction under this chapter may  
26 direct that arbitration be held in accordance with  
27 the agreement at any place therein provided for,  
28 whether the place is within or without the United  
States.

<sup>2</sup>Plaintiff need not be in privity with defendant to  
recover for breach of express warranties. Fundin v. Chicago  
Pneumatic Tool Company, 152 Cal. App. 3d 951, 956 (4th Dist.

[1] The Court first found that it had personal jurisdiction on Stork  
because Stork's activities and the dispute at issue were sufficiently connected to California, and the United States  
did not violate due process.

[2] The Court further held:

1 they relied on only the warranties appended to their  
2 purchase agreements from Nordtank; despite the existence of  
3 certain promotional and advertising materials for Stork's  
4 blades, and the presence of Stork personnel in California,  
5 plaintiffs state that they did not see or rely on sources  
6 outside of the Nordtank-Difwind or Nordtank-Viking  
7 agreements in purchasing the blades.

8 Therefore, the Court finds that plaintiffs were the  
9 assignees of the express warranties that Stork made to  
10 Nordtank. Plaintiffs, as assignees of the rights of  
11 Nordtank, are bound by the express limitations on those  
12 rights. Aeronaves de Mexico, S.A. v. McDonnell Douglas  
13 Corporation, 677 F.2d 771 (9th Cir. 1982). Consequently,  
14 plaintiffs must arbitrate the claim for breach of express  
15 warranties.

16 Plaintiffs also claim that Stork breached certain  
17 implied warranties: that the blades were fit for use in the  
18 WTGs assembled by Nordtank, and that the blades were  
19 merchantable, reliable and free of defects. Under  
20 California law, however, "privity between the plaintiffs and  
21 defendants remains a requirement for actions based on the  
22 implied warranty of merchantability as well as the implied  
23 warranty of fitness." Rodriguez v. Campbell Industries, 87  
24 Cal. App. 3d 494, 500 (4th Dist. 1978); Fundin v. Chicago

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27 1984). In theory, then, plaintiffs could have avoided the  
28 arbitration clause if they had relied on warranties not in the  
Stork-Nordtank agreement. Plaintiffs have failed, however,  
to identify any other express warranties.



1 Pneumatic Tool Company, 152 Cal. App. 3d 951, 956 (4th Dist.  
2 1984).<sup>3</sup>

3 Therefore, the only source of these implied warranties  
4 is the Stork-Nordtank agreement. When plaintiffs became  
5 assignees of the implied warranties in that agreement, the  
6 plaintiffs also agreed to subject disputes with Stork to  
7 arbitration.

8 Finally, since plaintiffs' tort claims for negligence  
9 and negligent interference with prospective economic  
10 advantage arise from Stork's duties as defined in the Stork-  
11 Nordtank sales agreement, these tort claims fall within the  
12 scope of the arbitration clause. Martin Marietta Aluminum  
13 Inc. v. General Electric Company, 586 F.2d 143, 148 (9th  
14 Cir. 1978) (arbitration provision covers strict liability,  
15 fraud and negligent misrepresentation claims); see Manetti-  
16 Farrow, Inc. v. Gucci America, Inc., 858 F.2d 509 (9th Cir.  
17 1988) (tort claims relating to a contract fall within a  
18 contract's forum selection clause).

19 IT IS HEREBY ORDERED that defendant's Motion to Dismiss  
20 for lack of personal jurisdiction is denied.

21 IT IS FURTHER ORDERED that plaintiffs and defendant  
22 arbitrate their disputes at the International Chamber of  
23 Commerce in accordance with the arbitration clause contained  
24

25  
26 <sup>3</sup> Exceptions to the general rule that plaintiffs and  
27 defendants must be in privity for plaintiff to sue for breach  
28 of implied warranty are inapplicable in this case. Those  
exceptions include an exception for foodstuffs and for  
employees injured by an item purchased by their employer from  
defendant. Fundin, supra 956 n.1.

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in the sales agreement between Ventilatoren Stork Hengelo  
B.V. and Nordtank A/S.

DATED: *January 23, 1989*

*Mariana R. Pfaezler*  
Mariana R. Pfaezler  
United States District Judge

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