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2008 ROUNDUP OF DECISIONS UNDER THE GENERAL AVIATION REVITALIZATION ACT OF 1994 (“GARA”)

In 1994, with general aviation aircraft production at a near standstill, Congress passed the General Aviation Revitalization Act of 1994¹ in an effort to stave off the further loss of jobs in this key industry resulting from the long tail of product liability. General aviation aircraft are all civil aircraft other than those flown by the military or commercial airlines and include corporate jets, medical evacuation helicopters, and small aircraft used for personal and recreational uses. According to the General Accounting Office, three out of four flights in the United States are general aviation flights.²

GARA is a classic statute of repose that bars claims against the original designer and manufacturer of the aircraft or its components provided the accident occurs more than 18 years after the aircraft was sold and delivered to its first purchaser.³ There are several qualifications to GARA, including a rolling provision, which could restart the repose period upon installation of a replacement part, and a fraud exception, which could allow a claim to proceed where there has been a knowing misrepresentation, withholding, or concealment of required information from the Federal Aviation Administration (“FAA”).⁴ Both such qualifications require that plaintiff prove a causal connection to the accident.

The Circuit Court of Cook County, Illinois recently issued a notable decision in favor of defendants concerning GARA.

South Side Trust and Savings Bank of Peoria v. Mitsubishi Heavy Industries Ltd.

In *South Side Trust and Savings Bank of Peoria v. Mitsubishi Heavy Industries Ltd.*,⁵ the Circuit Court of Cook County, Illinois granted summary judgment in favor of several defendants in a case arising from an accident involving a Mitsubishi MU-2B-20 aircraft on June 10, 2001 near Santa Fe, New Mexico International Airport and resulting in two fatalities. The National Transportation Safety Board determined that the cause of the accident was “the pilot’s loss of aircraft control in-flight for reasons undetermined. Contributing factors were the pilot’s inadequate transition/upgrade training and his total lack of experience in aircraft make/model.”⁶

Southside Trust and Savings Bank of Peoria, as personal representative of the decedents’ estates, brought a wrongful death suit against Mitsubishi Heavy Industries, Ltd. (“MHI”) and Mitsubishi Heavy Industries America, Inc. (“MHIA”), as the manufacturers of the aircraft; Honeywell International, Inc. (“Honeywell”), as the engine manufacturer; Woodward Governor Company (“Woodward Governor”), as manufacturer of the propeller governor of the aircraft; Air 1st Aviation Companies, Inc. (“Air 1st”), as the seller of the aircraft; and the deceased pilot’s flight instructors. Plaintiff alleged product liability and negligence against the defendants.

The court dismissed the product liability claims against Air 1st, as the seller of the aircraft, because Section 2-261 of the Illinois Code provides a

“sellers exception” whereby any non-manufacturing defendant, who has not been shown to have created or contributed to the alleged defect, may defer liability to the manufacturer. The court further dismissed the negligence claims against Air 1st, finding that Air 1st owed no maintenance duty to plaintiff because the duty had been delegated by Air 1st to a maintenance company in compliance with federal regulations. The court found no evidence that Air 1st had any knowledge of any defect or provided an express or implied warranty at the time of the sale of the aircraft to plaintiff’s decedents.

The remaining manufacturing defendants moved to dismiss the claims against them based on GARA, which states, in relevant part:

- (a) [n]o civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred –
 - (1) after the applicable [18 year] limitation period beginning on –
 - (A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or
 - (B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft...
- (b) EXCEPTIONS – Subsection (a) does not apply –
 - (1) if the claimant pleads . . . and proves, that the manufacturer . . . knowingly misrepresented to the Federal Aviation Administration, or concealed or withheld from the Federal Aviation Administration, required information that is material and relevant . . . that is causally related to the harm . . .

GARA, § 2(a)(1); § 3(3); § 2(b)(1).

The court concluded that GARA applied to the case because the aircraft was more than 18 years old

when the accident occurred. With respect to Woodward Governor, the court held that plaintiff had adequately alleged that Woodward Governor manufactured “new parts” added to the aircraft within 18 years of the accident, which satisfied the first prong to restarting GARA’s statute of repose. It concluded, however, that plaintiff’s claims against Woodward Governor were barred because there was no evidence that the “new parts” manufactured and installed by Woodward Governor actually caused the accident.

With respect to Honeywell, plaintiff alleged that GARA’s statute of repose was triggered anew by a revision to the Engine Maintenance Manual, which plaintiff argued constituted a “new component, system, subassembly, or other part” of the aircraft. The court rejected this argument, relying on the holding in *Colgan Air, Inc. v. Raytheon Aircraft Co.*,⁷ that a maintenance manual, unlike a flight manual, was not part of the aircraft. Thus, the court held that the revision to the engine maintenance manual did not restart the 18 year period of repose and granted summary judgment in favor of Honeywell.

Plaintiff raised several arguments against the application of GARA to MHI, the airframe manufacturer. First, plaintiff argued that GARA did not apply to MHI because it was a foreign manufacturer. Plaintiff further argued that, even if GARA applied, MHI was not protected because MHI knowingly misrepresented, concealed, or withheld required information from the FAA that caused the accident.

The court held that GARA applies to foreign manufacturers. The court reasoned that the statute’s language is plain and is neither qualified nor limited to American manufacturers. The court also cited several cases in which GARA’s applicability to foreign manufacturers, including MHI, was unquestioned.

After determining GARA’s applicability to MHI, the court addressed plaintiff’s argument that MHI was not entitled to GARA’s protection pursuant to an exception to GARA. Plaintiff invoked GARA’s “knowing misrepresentation exception,” which allows a claim covered by GARA to proceed if a

plaintiff pleads and proves that the manufacturer: 1) “knowingly misrepresented, concealed or withheld from the FAA”; 2) “required information that is material and relevant”; and, 3) “that is causally related to the harm.”⁸ The court found that under this exception, plaintiff was required to offer evidence that MHI knowingly misrepresented or concealed or withheld the design defect in communications with the FAA and pled the facts necessary to prove the exception with specificity.

In seeking to prove the exception, plaintiff relied on several test reports and letters between MHI and the FAA in attempting to show that MHI concealed issues of potential flight idle fuel flow problems with the aircraft. The court, however, found that none of the evidence proffered by plaintiff was sufficient to prove elements of the exception. In fact, the court concluded that the documents relied upon by plaintiff showed that MHI actually identified and disclosed these issues to the FAA and coordinated with the FAA in addressing the issues. The court also relied on affidavits by an employee of defendant MHIA and an independent engineering consultant who documented communications between MHI and the FAA regarding flight idle fuel flow issues, to which plaintiff failed to offer any contradicting evidence. Notably, the court concluded, “there is no evidence of concealment” and “plaintiff failed to present any evidence to the Court supporting its allegations of knowing misrepresentation or concealment by Defendant MHI.”⁹

With respect to MHIA, the court also concluded that GARA barred all of plaintiff’s claims. Plaintiff argued that MHIA was not a manufacturer because it did not actually manufacture the aircraft. The court rejected this argument and determined that GARA applied to MHIA because MHIA was a successor manufacturer. The FAA’s Type Certificate Data Sheet for the MU-2B model aircraft and the licensing agreement between MHI and MHIA showed that MHIA acquired the role of successor manufacturer for the component parts of the aircraft and the duties of maintaining the continued airworthiness of the aircraft. The court held that these responsibilities were consistent with those of a manufacturer and that MHIA qualified as a manufacturer for purposes of GARA.

This decision is not necessarily dispositive in other cases, as federal courts are not obligated to follow the holdings of state courts’ interpretations of federal statutes (such as GARA) and state courts are not required to follow the decisions of other states. However, all judges are influenced to some extent by well reasoned opinions that are supported by fact and law. This decision could have a positive impact on other judges who are not familiar with GARA since it addresses several important GARA issues (such as definitions of general aviation aircraft, airframe, manufacturer, component parts, and replacement parts; use of supporting affidavits; causation; application to foreign manufacturers; application to successor manufacturers; the knowing misrepresentation exception; and required information under the knowing misrepresentation exception). As a result, this opinion may be relied upon by other judges as both instructive and supportive in deciding other cases involving the application of GARA. It also is important because many plaintiffs use expert affidavits in an attempt to raise issues of fact to defeat summary judgment motions. The court in *South Side Trust* considered plaintiff’s expert affidavit of unsupported allegations, but concluded it contained “no evidence that [the components] caused the accident.”

This decision can serve as an excellent starting point for anyone with the need to address a GARA issue or any statute of repose.

There were several other decisions of note concerning GARA in 2008, most of which are consistent with prior case law.

Blazevska v. Raytheon Aircraft Co.

In *Blazevska v. Raytheon Aircraft Co.*,¹⁰ the United States Court of Appeals for the Ninth Circuit affirmed the district court decision granting summary judgment for the defendant airplane manufacturer.¹¹

Plaintiff brought a wrongful death suit against Raytheon Aircraft Co. (“Raytheon”) as the manufacturer of a Beechcraft Super King Air 200 which crashed in Bosnia, resulting in the death of the Macedonian president, his senior advisors, and the pilots. Raytheon asserted that the action was

barred by GARA. Plaintiff argued that GARA did not apply to a foreign accident. Raytheon's motion for summary judgment based upon GARA's 18 year statute of repose was granted and plaintiff appealed.

The Ninth Circuit noted that GARA "creates an explicit statutory right not to stand trial."¹² The manufacturer delivered the airplane to its first purchaser in 1980 and the accident occurred in 2004. Since the accident occurred more than 18 years after the initial transfer of the aircraft, GARA barred plaintiff's claim. Plaintiff argued that GARA should not apply to a foreign accident based on the presumption against extraterritoriality.

The court explained that the rationale behind the presumption against extraterritoriality is that "a law passed by Congress is generally assumed to apply only to regulate conduct occurring within the boundaries of the United States."¹³ The presumption is meant to prevent unintended conflicts between the laws of the United States and the laws of other nations. Plaintiff argued that the presumption applies because the case concerned a tort injury suffered in Macedonia. The Ninth Circuit noted that the presumption is not automatically applied solely because a case's factual background involves some conduct occurring abroad. The court must analyze whether any issue of extraterritoriality is implicated by examining the conduct regulated by the statute.

In *Blazevska*, the Ninth Circuit concluded that the presumption against extraterritoriality does not apply to GARA. The court noted that GARA only regulates the ability of a party to bring suit against a general aviation manufacturer in U.S. courts and, thus, does not regulate any non-domestic conduct. The application of GARA to an accident in a foreign country does not serve to implicate the presumption against extraterritoriality where suit is brought in the United States.¹⁴

Johnson v. Precision Airmotive, LLC

In *Johnson v. Precision Airmotive, LLC*,¹⁵ plaintiffs brought suit for strict liability and negligence, including allegations against alleged manufacturers of original or replacement parts of a Piper 32-300 airplane which crashed in Wabash, IN, resulting in

the deaths of four passengers. The United States District Court for the Eastern District of Missouri denied summary judgment without prejudice for the defendants who were alleged to have manufactured original or replacement parts for the airplane or airplane engine.

Defendants moved for summary judgment on the grounds that GARA establishes an "absolute right not to stand trial" and that they "should not have to submit to discovery if, under GARA, they cannot be held liable for plaintiffs' claims."¹⁶ The defendants argued in the alternative that if discovery were to proceed, it should be limited to GARA issues. The court denied the manufacturing defendants' motions as premature and refused to limit discovery, noting that GARA "does not say anything about discovery" and "does not establish any procedure for litigating airplane crash cases."¹⁷ It further held that it would not be workable to limit discovery to GARA, finding that "[e]stablishing the line between what is 'GARA discovery' and what is not would not be easy" and the court had "no interest in micro-managing discovery."¹⁸

The court noted that there "may come a point later... when consideration of defendants' GARA motion is appropriate," but that "[d]iscovery will be necessary to determine what was done to the plane and when, and which parties have manufactured parts of the airplane that are less than eighteen years old."¹⁹ As a result, the court held that until such discovery was conducted, the manufacturing defendants' motion was denied without prejudice.

Brewer v. Parker Hannifin Inc.

In *Brewer v. Parker Hannifin Inc.*,²⁰ the United States Court of Appeals for the Ninth Circuit affirmed summary judgment granted to the manufacturer of an aircraft component. The court's holding adds an interesting twist to existing case law concerning whether a manufacturer's publication is a part of the aircraft for the purposes of GARA and its replacement part rolling provision.

Plaintiff alleged that the vacuum pump manufactured by Parker Hannifin caused the accident. GARA barred plaintiff's claims because the pump was manufactured more than 18 years

before the accident. The court further found that “manuals and mailings” from Parker Hannifin did not trigger the rolling provision of GARA. The court found that even if manuals can be considered a part of the aircraft for the purposes of GARA (citing *Caldwell v. Enstrom Helicopter Corp.* for the proposition that the aircraft flight manual is a part of the aircraft for the purposes of GARA because it is a federally required and integral part of the aircraft²¹), the “manuals and mailings” relied on by plaintiff were not a part of the component that caused the accident because the component had been substantially changed. The court held that a manufacturer’s “manuals and mailings” did not apply to a part that had been “cannibalized” in an overhaul process, effectively stating that a manufacturer’s manual no longer applies to a part where the part has been so significantly changed that it can no longer be considered the same part originally produced by the manufacturer.

Conclusion

It appears that many courts are prepared to apply GARA as a bar to claims against general aviation manufacturers that have been in service for more than 18 years. Furthermore, assuming plaintiffs have had the opportunity for a reasonable amount of relevant discovery on issues related to the GARA defense, courts are increasingly willing to grant summary judgment in favor of manufacturers.

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¹ 49 U.S.C.A. § 40101, § 2 (1994).

² GAO-01-916, General Aviation.

³ 49 U.S.C.A. § 40101, §§ 2(a)(1), 3(3) (1994).

⁴ 49 U.S.C.A. § 40101, § 2(a)(2); § 2(b)(1).

⁵ No. 05 L 4052 (Ill. Cook County, filed Dec. 22, 2008).

⁶ N.T.S.B. Probable Cause Report, July 25, 2002.

⁷ 507 F.3d 270 (4th Cir. 2007).

⁸ GARA §2(b)(1).

⁹ *Southside Trust*, No. 05 L 4052 at 11.

¹⁰ 522 F.3d 948 (9th Cir. 2008).

¹¹ *Blazevska v. Raytheon Aircraft Co.*, No. C 05-4191, 2008 WL 1310455 (N.D.Cal. May 12, 2006).

¹² *Blazevska*, 522 F.3d at 951.

¹³ *Id.* at 952.

¹⁴ *Id.* at 955; *see also Alter v. Bell Helicopter Textron, Inc.*, 944 F. Supp. 531, 541 (S.D.Tex. 1996).

¹⁵ 2008 WL 2570825 (E.D. Mo. June 26, 2008).

¹⁶ *Id.* at *2

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at *3.

²⁰ No. 07-35326, 2008 WL 4750343 (9th Cir. Oct. 30, 2008).

²¹ 230 F.3d 1155 (9th Cir. 2000).