Attacking and Defending GARA: Competing Methods to Avoid and Uphold the General Aviation Revitalization Act of 1994

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INTRODUCTION

To supplement this year's panel discussion on GARA led by Andy and Mike, they have compiled this listing of recent cases as a reference. These cases represent recent developments in case law relating to the General Aviation Revitalization Act of 1994 (GARA) as located since 9-14-2005 (ordered by date of last activity). The summary includes reported cases, unreported cases and trial orders found in online services, but since many interesting developments in GARA case law occur in courts whose opinions never make it to Westlaw or LEXIS, Andy and Mike invite you to share your own GARA cases and any trends and arguments you see developing from both the plaintiff and defense perspectives. Please email any such material to mgjones@martinpringle.com.

CASE BRIEFS

[2006-3-20] *Lahaye v. Galvin*, No. 04-35136, 2006 WL 87609 (9th Cir. 2005) (unpublished).	**Rolling Provision (assembly/disassembly):** This case arose from the crash of a Westwind 1124A in Pennsylvania. The Plaintiff claimed that the crash was caused by a trim actuator that had been disassembled and reassembled shortly before the final flight. The trial court decided that despite the dis/re-assembly the actuator had been in the marketplace for more than the requisite 18 years and had not been substantially altered. On Appeal, the 9th Circuit upheld the decision and added that GARA protects foreign manufacturers of general aviation aircraft. The plaintiff subsequently applied for certiorari to the United States Supreme Court claiming that the 9th circuit's decision rendered "GARA's rolling provision powerless to protect general aviation accident victims in circumstances where an accident is caused by a replacement component, subassembly, system, or other part." The plaintiff argued that because the actuator itself was equipped with new jackscrews, rods and motors that GARA did not bar the claim. The Supreme Court denied certiorari on March 20, 2006.
[2006-5-4] *Willett v. Cessna Aircraft Co.*, 851 N.E.2d 626 (Ill. App. Ct. 2006), appeal denied, 221 Ill. 2d 676.	**Rolling Provision (burden of proof):** GARA precludes plaintiff from recovering from the manufacturer of an airplane that allegedly crashed because of a defective exhaust turbo wye when there is no evidence that the original wye had ever been replaced. Cessna had met its initial burden of showing GARA applied, and plaintiff then had the burden of establishing an exception. Don Sommer's affidavit that the exhaust turbo part "would have" been "either replaced or overhauled" as a part of an engine overhaul did not establish a new part had been installed.

[2006-5-12] *Blazevska v. Raytheon Aircraft Co.*, No. C 05-4191 PJH, 2006 WL 1310455 (N.D.Cal. 2006) (Order Granting Defendant's Mot. Sum. J., Apr. 5, 2006).	**GARA & Extraterritoriality:** This case arose from the crash of a Super King Air 300 in Bosnia, which resulted in the death of eight passengers. The court explained that "the presumption against extraterritoriality generally means that a law passed by Congress applies only to conduct occurring within the territory of the United States." [T]here is generally a two-step approach with respect to determining whether the presumption applies. The initial inquiry requires the court to determine whether or not the presumption applies at all; here, whether the application of GARA to the conduct it is designed to regulate presents an issue of extraterritoriality. . . . If the court determines that the conduct occurred beyond U.S. borders, then the second step requires the court to consider whether there is "'clear evidence of congressional intent to apply' the statute extraterritorially." The court determined that it need not reach the second step because "GARA seeks to regulate [] conduct occurring only in the United States" (despite plaintiff's argument that the court should focus on the event of the crash). Nonetheless, the court determined that "if [GARA] can be construed to 'regulate' any 'conduct', it must be construed to regulate litigation against manufacturers of airplanes." Consequently, the court granted defendant's motion for summary judgment as to all claims. An appeal to the 9th Circuit is pending.

[2006-6-15] *Holliday v. Extex*, 457 F. Supp. 2d 1112 (D. Haw. 2006).	**Rolling Provision (modification v. replacement) / Manual as new part:** This case arose out of the crash of a helicopter in Hawaii that was partially caused by the fracture of a compressor splined adapter (CSA). The CSA is an engine part located between the spur adapter gearshaft (SAG) and an impeller. The plaintiffs claimed that the impeller and the SAG contributed to the failure of the CSA. The entire engine was delivered over 18 years before the accident, but during an overhaul in 2000, the CSA was replaced with another, made by Extex, and claims regarding it were therefore not GARA barred. The impeller was not replaced but instead modified by shortening it according to a Rolls-Royce Allison (RRA) 1993 "Baseline" redesign of its engine. Later the SAG was replaced with one from RRA. In order to avoid GARA's bar on claims regarding the engine generally and the impeller specifically, the plaintiffs asserted that when the RRA Baseline engine design was implemented it was effectively the installation of a new "system" under GARA. The court disagreed and found that GARA's rolling provision is only implicated when a new physical part is installed, not when modifications are made such as the Baseline redesign involving the shortening of the impeller. The court also rejected an argument that the period of repose should be rolled when there are changes to an overhaul manual. Even if an overhaul manual can be considered a "new part" for the rolling feature, plaintiffs had not alleged that the manual failed. While potential claims against the CSA and SAG were not barred by GARA because they had been replaced, RRA argued there was no evidence the SAG failed and it should also receive summary judgment against that claim. The court held there was an issue of fact regarding whether the SAG contributed to the CSA fracture and accident, and thus only granted the RRA motion for summary judgment in part on the GARA issues.

[2006-7-6] *Robinson v. Hartzell, Propeller, Inc.*, 454 F.3d 163 (3rd Cir. 2006).	**GARA & the Collateral Order Doctrine:** This case arises from the crash of a Mooney M20E where the propeller fractured during flight. Hartzell was denied summary judgment under GARA, and it sought to immediately appeal the denial under the collateral order doctrine, which is an exception to the rule against immediately appealing otherwise non-final orders. In contrast to the Pennsylvania Supreme Court in the *Pridgen v. Parker Hannifin* case noted below and the 9th Circuit's decision in *Estate of Kennedy v. Bell Helicopter*, 283 F.3d 1107 (9th Cir. 2002), the Third Circuit decided that GARA does not fit the narrow exception of the collateral order doctrine. The court explained that GARA is more like a statute of limitations than it is like the qualified or absolute immunity of government officials GARA was likened to in *Kennedy*, because it confers immunity from liability rather than immunity from suit. Additionally, the analysis of whether GARA applied on the facts of Robinson was "intertwined" with a factual decision on the merits, thus consideration of an interlocutory appeal should be precluded. In *Kennedy* and *Pridgen,* the GARA issues were more legal than factual. Thus, the appeal was dismissed.
[2006-10-24] *Sheesley v. Cessna Aircraft Co.*, 2006 WL 3042793 (D.S.D. 2006).	**Rolling Provision (system v. component / scope of evidence allowed):** This case arises out of a Cessna aircraft crash where it was alleged that a leaky exhaust had caused left engine fuel lines to melt. Cessna moved *in limine* to exclude evidence at trial of any defect other than in the left "wastegate elbow," which was the only part not barred by GARA, since it had been replaced less than 18 years prior to the crash. The court held that GARA only rolled for the wastegate elbow which had been replaced and not for the entire system in which the elbow is placed. The plaintiffs argued that they should be allowed to argue that defects in both the exhaust and fuel systems to demonstrate how the wastegate elbow caused the crash. The Court disagreed with this argument and stated that the plaintiffs could only present evidence involving causal failure of the replaced elbow, without arguing the existence of defects in the overall systems to which GARA applied.

[2006-10-27] *Wicksell v. Bombardier Corp.*, 2006 WL 3483472 (S.D. Fla. 2006).	**GARA & Removal:** This case arises from the crash of an aircraft under icing conditions in Colorado. The case was originally filed in state court and was removed to federal court on the basis of claimed federal question jurisdiction. The defendant, Bombardier, argued that the plaintiff's complaint closely tracked GARA's misrepresentation or concealment exception and was an attempt to invoke the exception. Thus, GARA was implicated, as were other federal law and aviation regulations, thus making federal question jurisdiction appropriate. The court rejected Bombardier's argument and remanded the case to state court because GARA was a potential defense to, rather than the basis of, plaintiffs' claims and stated that "there is no such thing as a 'claim' under GARA."

[2006-11-2] *Croman Corp. v. General Elec. Co.*, No. 2:05-cv-0575-GEB-JFM, 2006 WL 3201099 (E.D.Cal. 2006) (Slip Copy).	**Various:** This case arises from the crash of a Sikorsky S61A helicopter involved in logging operations. Although the aircraft and its parts were delivered in excess of 18 years before the crash, the plaintiff owner/operator argued virtually every aspect of GARA's application. **20 Passenger Limitation:** First, the court examined GARA's definition of a "general aviation aircraft" as one "which, at the time [of original certificate issuance], had a maximum seating capacity of fewer than 20 passengers." The court found that the restricted 1967 certificate was the controlling certificate, not the 1962 experimental airworthiness certificate. The plaintiff also argued that because the aircraft's type certificate's was silent on the number of passengers and a logbook reference indicated 18 troop seats in 1967, that the helicopter could accommodate 20 passengers (it had two crew seats). The court rejected this argument because "the pilot and co-pilot seats are not passenger seats," and it held that the aircraft was a general aviation aircraft under GARA. **Previous Location of Engine Installation:** Second, the court analyzed whether the engine manufacturer (GE), could claim GARA's benefits even though the engine had originally been installed on other than a general aviation aircraft. The court held that the relevant focus is the accident aircraft at the time of the accident, not any aircraft where its components may previously have been installed or even the accident aircraft if previously not a general aviation aircraft. **Failure to Warn Claims:** Third, the court held that a failure to warn claim does not allow the plaintiff to avoid GARA's bar. **Failure to Plead Facts:** Fourth, and last the court held that the plaintiff could not use the misrepresentation or concealment exception under GARA because it had failed to plead facts giving rise to a claim for misrepresentation or concealment, as the exception requires. The fraud exception had not been raised until summary judgment opposition.

[2006-11-7] *Brewer, v. Dodson*, No. C04-2189Z, 2006 WL 3231974 (W.D.Wash. 2006) (Order).	**Rolling Provision (overhaul by third party/service letters do not reset clock):** This case arises from the fatal crash in Oregon of a Beechcraft Bonanza in 2003. The plaintiffs argued that the rolling provision was implicated and the period of repose was restarted against the component manufacturer when a component was overhauled by a third party. The court stated that GARA's repose period might possibly restart with regard to the defendant that actually re-manufactured the component, but it held that there was "no basis for restarting the repose period" as to the manufacturer of the component. The court also dismissed the plaintiff's theory based on the component manufacturer's failure to warn of an alleged danger in service letter mailings within 18 years of the accident and found that such mailings did not trigger the rolling provisions.
[2007-2-21] *Pridgen v. Parker Hannifin, Corp.*, 916 A.2d 619 (Pa. 2007).	**Rolling Provision (replacement part v. manufacturer of engine / collateral order doctrine):** This case arose out of the fatal crash of a Piper PA-32-260 in 1999, and raised the issue of whether the rolling provision can reset the repose clock as to the designer, type certificate holder and original manufacturer of the entire engine merely because of the replacement by a third party of an individual part within the engine. On appeal, the Pennsylvania Supreme Court first held that an initial denial of a GARA motion at the trial court falls under the collateral order doctrine allowing immediate appeal by the defendant. Compare with the *Robinson* case above. The court then held that replacing an individual component of an engine only resets the GARA clock as to the maker of that part not as to the manufacturer, designer or type certificate holder of the entire engine or aircraft. While the trial court's denial of defendant's GARA motion was reversed, it was remanded to the trial court to further study unresolved issues relating to the fraud exception.

[2007-8-17] *Moyer v. Teledyne*, No. 2577, 2007 WL 2408440 (Pa. Super. Ct. 2007) (Trial Order).	**<u>Service Bulletin as Replacement Part and Misrepresentation:</u>** This case arises from the January 26, 2003, death of the Moyers who were killed when their single engine Beech aircraft crashed on an island in the Delaware River. In-flight, Moyer reported a loss of engine power. At the time of the crash, the aircraft contained an engine assembled by Defendant TCM. TCM assembled and shipped the engine to Beech Aircraft in 1980. Beech Aircraft installed the engine on the aircraft and it aircraft was delivered to the owner on April 8, 1982. At the time of the crash, the crankcase of the engine was a replacement, formerly in another TCM engine. TCM never inspected, repaired or modified either crankcase after the initial assembly. The crankcase that was in the aircraft at the time of the crash was previously repaired. In 1998, a crack was found in the original crankcase. The engine was sent to Piedmont for repair. Piedmont removed the crankcase and sent it to Divco, Inc. for repair. Instead of repairing the crankcase, Divco replaced the crankcase and returned the replacement to Piedmont. Piedmont installed the Divco crankcase in the aircraft. Thus, the replacement crankcase is why the engine, at the time of the crash, bore a different serial number than the crankcase. In 2002, the aircraft engine underwent a "top overhaul" of the engine, replacing parts designed and manufactured by Defendant Superior. During the 2002 repair, a silicon sealant was applied to the cylinders of the crankcase, which was unapproved by TCM. The court held that the issuance of a service bulletin by TCM that related to the crankcase in question was not a part replacement under GARA. Further, the court held that the misrepresentation exception was inapplicable because the plaintiff had failed to meet the elements simply by pointing to potentially conflicting information between TCM's disclosures to the FAA and the service bulletin. It seemed to weigh heavily in the court's calculus that the subject matter of the conflicting information had no causal relationship to the crash. Thus, the Court granted TCM's (and Piedmont's) motion for summary judgment.

Requested Bio:

Michael G. Jones is a partner in the law firm of Martin, Pringle, Oliver, Wallace & Bauer, L.L.P., in Wichita, Kansas. He concentrates his practice in product liability, aviation law, and business and technology related litigation. Mr. Jones is a committee member of the DRI

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