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The General Aviation Revitalization Act: A brief overview

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Although the General Aviation Revitalization Act ("GARA") has been in existence for more than a decade, its interpretation continues to evolve with recent case law. This article provides a brief overview of GARA, examines its definitions and protections, and looks closely at two recent cases, namely, *Schwartz v. Hawkins & Powers Aviation, Inc.*[1] and *Hinkle v. Cessna Aircraft Company*,[2] and how they further impact the interpretation of GARA.

In 1994, Congress passed GARA, which implemented an 18 year statute of repose for lawsuits against manufacturers of general aviation aircraft and component parts.[3] Particularly, GARA provides:

> (a) **In general** – Except as provided in subsection (b), no 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 any new component, system, subassembly, or other part of the aircraft, in its capacity as manufacturer if the accident occurred -
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> (1) after the applicable limitation period beginning on -
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> (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; or
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> (2) with respect to any new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury or damage, after the applicable limitation period beginning on the date of completion of the replacement or addition.[4]

Who can invoke GARA?

As indicated in the plain language of the statute, the protections afforded by GARA are limited to manufacturers of general aviation aircraft and their component parts. This, of course, leads to the questions: Who is a manufacturer under GARA? And, what is a general aviation aircraft?

a. Manufacturers

To date, the various courts of the United States have broadly interpreted GARA to include more than just the original manufacturer. In addition to the original manufacturer, successors in interest to the original manufacturers have been allowed to raise the GARA defense,[5] as have various agents of the original manufacturers.[6] It is also possible that distributors, sellers and lessors may be able to avail themselves of the protections afforded by GARA, depending upon the definition of a manufacturer provided by the laws of the state in which the litigation is pending.[7]

b. General Aviation Aircraft

GARA defines a "general aviation aircraft as:

> Any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger-carrying operations[8] …"

Many plaintiffs have attempted to create an issue of fact with respect to the designation of an aircraft's status as a general aviation aircraft, but, as shown below, the courts are liberal in their interpretation of this statute, and where a defendant can show that its aircraft meets the above criteria, regardless of variation, the courts have deemed such aircraft as one availing itself of the protections afforded by GARA.

GARA exceptions

While GARA has afforded significant protection to the manufacturers of general aviation aircraft and their component parts, it has not completely shielded these entities and/or persons from liability. There are four exceptions to GARA's statute of repose: the fraud exception, the medical emergency exception, the not aboard the aircraft exception, and the written warranty exception.[9] The fraud exception is perhaps the most highly litigated provision of GARA, and has been the subject of recent litigation, as shown below.

Recent case law interpreting GARA

In *Schwartz v. Hawkins & Powers Aviation, Inc.*,[10] the plaintiffs, survivors of two individuals who died while piloting a plane that was performing fire suppression services pursuant to a contract with the government, brought an action against numerous defendants including the owner of the aircraft and the manufacturer of the aircraft. Of relevance to this article, the action against the manufacturer(s) sounded in strict products liability.

Moving to dismiss the claims of the plaintiffs, the manufacturer(s) argued that the claims were barred by the 18 year statute of repose applicable to general aviation aircraft under GARA. In opposition, the plaintiffs claimed that the aircraft was not a general aviation aircraft, but rather a public aircraft within the meaning of the Federal Aviation Act of 1958 ("FAA"), and therefore not protected under GARA. Further, the plaintiffs claimed that GARA was not applicable because the aircraft was issued a "Special Restricted Airworthiness Certificate," and not a "Standard Airworthiness Certificate." The plaintiffs also claimed that subsequent modifications to the aircraft tolled the statute of repose. Finally, the plaintiffs attempted to invoke two of GARA's four statutory exceptions: the knowing misrepresentation exception, and the warranty exception.

In granting the motions of the defendants, the Court rejected the plaintiffs' distinction between a general aviation aircraft and a public aircraft. The Court found that the terms "public aircraft" and "general aviation aircraft" are not mutually exclusive, and it is possible that an aircraft may be considered both a "public aircraft" under the FAA and a "general aviation aircraft" under GARA.

With respect to the plaintiffs' argument regarding the aircraft's airworthiness certificate, the Court noted "nowhere in the definition of 'airworthiness certificate' is there reference to either 'standard' or 'restricted' certificates. The distinction is never made."[11] Thus, the Court rejected this argument by the plaintiffs as well.

In rejecting the plaintiffs' subsequent modifications argument, the Court noted that the addition of a new component part does not implicate GARA's rolling provision, unless the revised part is alleged to have caused the death, injury or damage. The plaintiffs failed to make any such averment in the Complaint.

Finally, with respect to the plaintiffs' attempt to invoke the statutory exceptions of GARA, the Court once again rejected these claims. Particularly, the Court noted that the plaintiffs failed to aver facts supporting the elements of knowing misrepresentation with specificity. Moreover, despite arguing the same in their opposition to the defendants' motion to dismiss, the plaintiffs never alleged the existence of a written warranty. Thus, the Court rejected this claim by the plaintiffs.

In the unpublished decision *Hinkle v. Cessna Aircraft Company*,[12] the Michigan Court of Appeals upheld the summary judgment dismissal of a fuel pump manufacturer and engine manufacturer, but reversed the lower court's dismissal of an airplane manufacturer. *Hinkle* arose out of a 1995 accident, in which it was alleged that the aircraft's right engine-driven fuel pump, which was manufactured in 1969 or 1970, failed. It was undisputed that the aircraft's engine was built in 1980.

The plaintiffs, who only presented evidence during the trial pertaining to the fuel pump as the cause of the accident, argued on appeal that the fuel pump was such an integral part of the aircraft's engine that its failure was essentially equivalent to the failure of the engine itself and that as a result, the Court should hold the engine manufacturer liable for the failure of its component part. The Court rejected this argument on the basis that adopting the plaintiffs' reasoning would effectively circumvent the GARA statute of repose by allowing plaintiffs to bring suit against any manufacturers of a part when a sub-part, which was the actual cause of the accident, was replaced or added to, even if the original part was over 18 years of age. The Court emphasized that proper analysis of GARA should focus on the component that actually causes the crash, not the larger part that encompasses many smaller components, one of which was the allegedly defective part. Thus, while GARA in itself did not apply to the engine manufacturer, the Court refused to find the engine manufacturer liable for the failure for one of its component parts.

The Court further rejected the plaintiffs' argument that GARA should not apply to the fuel pump manufacturer because the fuel pump was overhauled less than two years prior to the crash, thus "rolling" the GARA statute. In doing so, the Court noted that focusing on the plain language of the statute, "the overhaul of an aircraft part or component does not render it 'new' for purposes of rolling the GARA statute." Rather, "the GARA statute is only rolled if a 'new' part replaces an old part or is added to the aircraft."

The Court also affirmed the lower court's denial of the plaintiffs' motion to vacate the dismissal of the aircraft manufacturer on the basis that the plaintiffs' decedent utilized a 1985 supplemental manual, which the plaintiffs argued was a "part" of the aircraft. Stating that in certain instances an aircraft manual may constitute "part" of an aircraft for purposes of GARA, the Court noted that the plaintiffs failed to prove that the manual was a "part" of the particular aircraft, and likewise failed to allege a specific causal connection between the crash and any allegedly false or inadequate warnings contained in the supplemental manual.

However, the Court did reverse the lower court's dismissal of the aircraft manufacturer on the grounds that the plaintiffs satisfied the elements of GARA's "knowing misrepresentation or concealment or withholding exception." In this regard, the Court found that the plaintiffs satisfied their burden in proving that the manufacturer submitted certification results to the FAA, which contained misrepresentations as to the aircraft's ability to fly safely with one inoperable engine. The Court found a direct correlation between this misrepresentation and the cause of the accident, as there was evidence that the pilot relied upon the reported results for performance expectations.

Conclusion

The purpose of this article has been to provide our clients with an analysis of the current state of GARA. We recognize that this article only summarizes a small portion of the recent caselaw in the field. As a result, this article will be the first of what will be a series of articles examining some of the changes in the airline industry and the legal ramifications of GARA.

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[1] 2005 U.S. Dist. Lexis 12188 (Wyo. 2005).
[2] 2004 Mich. App. Lexis 2894 (Mich. 2004).
[3] The General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552, reprinted in 49 U.S.C.S. § 40101, note.
[4] Id.
[5] See, e.g., Burroughs v. Precision Airmotive Corp., (2000) 78 Cal. App. 4th 681; 93 Cal. Rptr. 2d 124.
[6] See 67 J. Air L. & Com. 1269, 1289.
[7] Id.
[8] GARA §2(c).
[9] GARA §2(b).
[10] 2005 U.S. Dist. Lexis 12188 (Wyo. 2005).
[11] Id. at 11.
[12] 2004 Mich. App. Lexis 2894 (Mich. 2004).
