Eighteen-year statute of repose may exclude ultralight aircraft accidents
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The General Aviation Revitalization Act of 1994 (“GARA”) provides significant protection from products liability lawsuits to manufacturers of general aviation aircraft and their component parts. GARA shields manufacturers of general aviation aircraft from liability for injuries or death caused by the aircraft or its component parts if they were delivered at least eighteen years prior to the date of the accident. However, the definition of “general aviation aircraft” and the intent of GARA appears to exclude ultralight aircraft, opening manufacturers of ultralight aircraft to potential products liability litigation without the protections afforded by the eighteen-year statute of repose.

Background

Ever since its passage in 1994, the manufacturers of general aviation aircraft and their component parts have found significant protection from products liability lawsuits due to the General Aviation Revitalization Act of 1994 (“GARA”). Indeed, it is quite possible that aircraft manufacturers have grown complacent in the belief that GARA’s eighteen-year statute of repose provision will shield them from liability for injuries or death caused by a design or manufacturing defect in an airframe, its engine or systems, if the defective component or part was delivered at least eighteen years prior to the date of an accident. To an extent, complacency on the part of manufacturers is justified, in that GARA has proven to be a useful tool in protecting the general aviation industry from products liability lawsuits. However, it should be noted that there is a little-known and rarely-exploited exception to GARA’s protections.

Specifically, GARA’s eighteen-year statute of repose does not apply to all aviation-related accidents. Although there is currently an absence of case law and jurisprudential scholarship on the subject, it is possible that accidents occurring due to the failure of an ultralight vehicle, its engine, or its systems, are not covered by GARA’s statute of repose. As such, the manufacturer of an ultralight, its engine, or component parts may very well be subject to suit based on products liability principles, well beyond GARA’s eighteen-year statutory period.

The History and Intent of GARA

In 1994, Congress passed GARA, which was enacted in part “to address serious concerns about the enormous product liability costs that our tort system had imposed upon manufacturers of general aviation aircraft.”

Specifically, Congress enacted GARA because it:

was deeply concerned about the enormous product liability costs that our tort system had imposed upon manufacturers of general aviation aircraft. It believed that manufacturers were being driven to the wall because, among other things, of the long tail of liability attached to those aircraft, which could be used for decades after they were first manufactured and sold.

Thus, it can be said that Congress passed GARA in an attempt to protect the domestic aircraft manufacturing industry, which had declined to a shocking degree in the 1980’s. The rapidity of the industry’s decline was taken as foreboding the potential extinction of the industry due to products liability lawsuits. In order to prevent this extinction of the general aviation industry, Congress utilized GARA to create an eighteen-year statute of repose.

This eighteen-year statute of repose is distinguishable from, and more protective than, a statute of limitations in that:

[T]he focus of a statute of repose is entirely different from the focus of a statute of limitations. [A] statute of repose proceeds on the basis that it is unfair to make somebody defend an action long after something was done or some
Within this context, GARA’s statute of repose provision protects inter alia the manufacturers of “general aviation aircraft” from suit for injuries or death caused by the aircraft, if the aircraft was delivered at least eighteen years prior to the accident in question. Moreover, GARA affords its protections 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.”

The shield of GARA has been used effectively to obtain summary dismissal of many cases. Indeed, in a case with far-reaching implications given the aging nature of the general aviation fleet, a court has even found that a helicopter manufacturer was entitled to summary judgment based on the application of GARA’s statute of repose, where the decedent’s death was allegedly caused by a design defect resulting in fatigue cracks, when the cracks manifest themselves more than eighteen years after the helicopter was first delivered.5

Issues

The Potential Inapplicability of GARA to Ultralight Accidents

The foregoing notwithstanding, GARA is not a panacea with respect to all aviation-related products liability lawsuits brought more than eighteen years after the product in question was delivered. Of crucial import in this respect, is the fact that GARA only affords its protection to “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.” GARA, §2(c). Moreover, pursuant to 14 CFR §21.175, the F.A.A. may offer only two types of airworthiness certificates, “standard” and “special:”

(a) Standard airworthiness certificates are airworthiness certificates issued for aircraft type certificated in the normal, utility, acrobatic, commuter, or transport category, and for manned free balloons, and for aircraft designated by the Administrator as special classes of aircraft.

(b) Special airworthiness certificates are primary, restricted, limited, light-sport, and provisional airworthiness certificates, special flight permits, and experimental certificates.

Id.

Comment

Noteworthy is the fact that neither “standard” nor “special” airworthiness certificates are applicable to ultralight vehicles. Indeed, this is confirmed by 14 C.F.R. §103.1, which governs the operation of ultralight vehicles in U.S. airspace.

Section 103.1 of the Federal Aviation Regulations states, in pertinent part:

Subpart A- General
§ 103.1 Applicability

This part prescribes rules governing the operation of ultralight vehicles in the United States. For the purposes of this part, an ultralight vehicle is a vehicle that:

(a) Is used or intended to be used for manned operation in the air by a single occupant; and,

* * *

(c) Does not have any U.S. or foreign airworthiness certificate; and,
(e) If powered:

(1) Weighs less than 254 pounds empty weight…;

(2) Has a fuel capacity not exceeding 5 U.S. gallons;

(3) Is not capable of more than 55 knots calibrated airspeed at full power in level flight; and

(4) Has a power-off stall speed which does not exceed 24 knots calibrated airspeed.

Id. (emphasis added)

Thus, pursuant to Federal Aviation Regulations, an ultralight vehicle is defined, in part at least, as a vehicle that does not possess an airworthiness certificate. Indeed, it appears that it was the explicit intent of Congress to exempt ultralight vehicles from an airworthiness certificate or type requirement, as stated by 14 C.F.R. §103.7, which asserts:

(a) Notwithstanding any other section pertaining to certification of aircraft or their parts or equipment, ultralight vehicles and their component parts and equipment are not required to meet the airworthiness certification standards specified for aircraft or to have certificates of airworthiness.

(c) Notwithstanding any other section pertaining to registration and marking of aircraft, ultralight vehicles are not required to be registered or to bear markings of any type.

Thus, by very definition, ultralight vehicles are operated in U.S. airspace without either a type certificate or an airworthiness certificate. As such, ultralight vehicles or their component parts, may not be afforded the protections of GARA, as GARA applies to “any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration.” GARA, §2(c).

Conclusion

Based upon our review of the legislative history and intent of GARA, it may be inapplicable to accidents occurring as the result of a product or design defect in an ultralight aircraft, or its component parts. However, we caution that the state of the law in this area may change. In the meantime, however, it appears from a review of the state of the law that manufacturers of ultralight vehicles, or the component parts or systems located on ultralight vehicles, may be open to suit for design defects that allegedly cause injuries beyond GARA’s eighteen-year statute of repose.

3 Lyon v. Agusta, S.P.A., 252 F.3d 1078, 1084 (9th Cir. 2001).
4 Estate of Robin Grant Kennedy v. Bell Helicopter Textron, Inc., 283 F.3d 1107,1111 (9th Cir. 2001).
6 See generally, Ickes v. Federal Aviation Administration, 299 F.3d. 260 (3rd Cir. 2002).