STATE OF MICHIGAN

COURT OF APPEALS

LAURINDA HINKLE and ESTATE OF CRAIG D. HINKLE, by LAURINDA HINKLE, Personal Representative,

Plaintiffs-Appellants,

v

CESSNA AIRCRAFT CO., LEAR ROMEC, a/k/a HYDRO-AIRE, and TELEDYNE CONTINENTAL MOTORS, a/k/a TELEDYNE INDUSTRIES,

Defendants-Appellees,

and

UNITED STATES OF AMERICA,

Intervenor-Appellee,

and

RILEY AVIATION, INC., HANSEATIC AIR, INC., HANSEATIC AIR OF MICHIGAN, INC., COLDWATER AIR, INC., TRI-STATE AIRMOTIVE, LLC., AIRCRAFT ACCESSORIES OF OKLAHOMA, and TRI-STATE AVIATION SERVICES,

Defendants.

UNPUBLISHED
October 28, 2004

No. 247099
Branch Circuit Court
LC No. 96-003161-NP

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Plaintiff[1] appeals as of right the trial court's order granting summary disposition in favor of Cessna Aircraft Co. (Cessna), Lear Romec, Teledyne Continental Motors (Teledyne),[2] and the United States of America. The main issues in this appeal involve the applicability to plaintiff's claims of the eighteen-year statute of repose found within the General Aviation Revitalization Act of 1994 (GARA), 49 USC § 40101 note. We hold that (1) the trial court was correct in rejecting plaintiff's constitutional challenges to the GARA, (2) plaintiff's claims against Teledyne and Lear Romec were properly dismissed as barred by the statute of repose, (3) there exists a genuine issue of material fact on plaintiff's GARA claim against Cessna, and (4) the supplemental manual is not a "new part" under GARA. We therefore affirm in part, reverse in part, and remand for further proceedings.

I. Factual and Procedural Background

On approximately September 21, 1995, Craig Hinkle, plaintiff's husband, was killed while piloting a Cessna 421B aircraft, federally registered as N14A, near Coldwater, Michigan. Cessna manufactured the aircraft and delivered it for sale to an unidentified party on March 23, 1973. It is undisputed that the engine was built by Teledyne in 1980. Additionally, it appears that the parties agree that the fuel pump was manufactured by Lear Romec in 1969 or 1970 and that it was assembled in 1972 by Teledyne. On March 21, 1996, plaintiff filed a complaint against Cessna (the airplane manufacturer), Teledyne (the engine manufacturer), and Lear Romec (the fuel pump manufacturer), alleging claims of negligence and misrepresentation, breach of warranty, and product liability against each of these defendants.[3]

In April 1996, Cessna removed the case to the United States District Court, Western District of Michigan, alleging federal question jurisdiction pursuant to 28 USC 1331. The case was subsequently remanded to the Branch Circuit Court for lack of federal question jurisdiction. See *Hinkle v Riley Aviation, Inc*, unpublished order of the United States Court of Appeals for the Sixth Circuit, issued December 13, 1996, (Docket Nos. 96-2282 and 96-2391) (clarifying that the district court did not dismiss plaintiff's action but merely made the determination that federal question jurisdiction was lacking).

Following remand to the Branch Circuit Court, Cessna brought a motion to dismiss plaintiff's complaint pursuant to MCR 2.115, or in the alternative, for a more definite statement. Cessna contended that plaintiff's claims against it were subject to the statute of repose under the

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[1] For purposes of this opinion, we will refer to one individual plaintiff since Laurinda Hinkle filed suit in both her individual capacity and in her capacity as the personal representative of the estate of Craig D. Hinkle.

[2] Cessna, Teledyne, and Lear Romec are collectively referred to as the GARA (General Aviation Revitalization Act of 1994) defendants.

[3] Plaintiff filed a first amended complaint on November 26, 1997; however, the amended complaint merely added parties to the suit and did not set forth additional allegations against Cessna, Lear Romec, or Teledyne.

GARA,[4] and that plaintiff failed to plead with specificity the claims against Cessna involving the fraud and misrepresentation exceptions to GARA. Plaintiff countered that the complaint adequately pleaded a state law cause of action notwithstanding the GARA requirements.

After oral argument on Cessna's motion, the trial court dismissed plaintiff's claims for breach of implied warranty. The trial court then provisionally dismissed plaintiff's complaint, but granted plaintiff leave to conduct limited discovery on the issue of whether the GARA defendants knowingly misrepresented, withheld, or concealed information from the FAA under GARA, and on the presence of an express warranty. The court further ordered that its ruling would also apply to Lear Romec and Teledyne.

Plaintiff subsequently filed a motion for partial summary disposition challenging the constitutionality of GARA. Plaintiff contended that GARA violated the Tenth Amendment by imposing the eighteen-year statute of repose on the states while failing to provide claimants any redress. Plaintiff further contended that the GARA statute of repose was a violation of due process, equal protection guarantees, and the right to free access to the courts. The GARA defendants and the United States, as an intervenor,[5] contended that the statute was constitutional.

The trial court determined that GARA was constitutional. The court rejected plaintiff's arguments that the statute was unconstitutional because it was arbitrary and that the statute violated the Tenth Amendment. The trial court also concluded that even if "the plaintiff is correct, that no rights were given by this legislation; that this is not an impediment to its constitutionality."

Pursuant to the trial court's provisional dismissal, plaintiff filed a brief regarding the applicability of GARA. Plaintiff contended that GARA did not apply to Teledyne or Lear Romec because the right engine was not more than eighteen years old, or alternatively, because the right engine was rebuilt and overhauled in 1994. Plaintiff also argued that GARA did not apply to Cessna because there was evidence that Cessna knowingly misrepresented or concealed or withheld required information pertaining to the engine's handling qualities and characteristics from the FAA and from the aircraft's users and consumers. Plaintiff further asserted that the GARA statute of repose did not apply to her claims against Cessna because it breached an express warranty.

Lear Romec contended that GARA barred suit against it because the fuel pump was shipped in 1969 or 1970 and the accident occurred more than eighteen years after the later date. Teledyne argued that regardless of the age of the engine, GARA barred suit against it because plaintiff's claim related to a fuel pump and not the engine manufactured by Teledyne. Teledyne also contended that an overhaul of the engine by third parties did not extend the GARA limitations period. Cessna asserted that plaintiff failed to prove that either of the two relevant

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[4] Reprinted at 49 USC § 40101 note.

[5] On December 18, 1999, the United States filed an unopposed motion to intervene as a party defendant.

exceptions to GARA applied to Cessna, and that even if plaintiff were able to prove a misrepresentation, plaintiff could not demonstrate a causal connection between the alleged misrepresentations and the accident.

Following oral argument, the trial court determined that summary disposition should be granted in favor of the GARA defendants. Regarding Lear Romec, the court determined that the overhaul of the fuel pump did not retoll the GARA statute, and that suit was barred against it pursuant to the statute. With respect to Teledyne, the court held that plaintiff failed to demonstrate that the engine was causally related to the crash and that there was no evidence that there was a GARA exception that would apply to Teledyne regarding the fuel pump. Finally, the trial court held, with respect to Cessna, that the aircraft was over eighteen years old and plaintiff failed to demonstrate that a GARA exception applied to prevent the statute of repose from taking effect.

On September 30, 1999, the trial court entered an order denying plaintiff's motion for partial summary disposition on the grounds that GARA was unconstitutional. The trial court also entered an order dismissing Cessna, Teledyne, and Lear Romec from the action with prejudice.

II. Constitutionality of GARA

We first address the issue of whether GARA is constitutional. Reviewing the trial court's ruling de novo, *DeRose v DeRose*, 469 Mich 320, 326; 666 NW2d 636 (2003), we find that the statute is constitutional.

Statutes are presumed constitutional, and courts must construe a statute as such unless unconstitutionality is clearly apparent. *Phillips v Mirac, Inc*, 470 Mich 415, 422-423; 685 NW2d 174 (2004); *Mahaffey v Attorney General*, 222 Mich App 325, 344; 564 NW2d 104 (1997). The party asserting the constitutional challenge has the heavy burden of overcoming this presumption. *Michigan Soft Drink Ass'n v Dep't of Treasury*, 206 Mich App 392, 401; 522 NW2d 643 (1994).

Plaintiff first argues that GARA violates the Tenth Amendment and the Commerce Clause of the United States Constitution because it removes guaranteed state law rights and claims, while leaving no alternative rights or remedies. The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." US Const, Am X. The Tenth Amendment is a crucial amendment that solidifies our federalist form of government, for it recognizes that the Constitution has given Congress specific and limited powers, and those powers not granted to the federal government are left to the States, or the people. *Gregory v Ashcroft*, 501 US 452, 457-458; 111 S Ct 2395; 115 L Ed 2d 410 (1991).

One of the specific powers granted to Congress is the ability to regulate interstate commerce. Specifically, the Commerce Clause provides that Congress "shall have [p]ower . . . [t]o regulate Commerce . . . among the several States . . . ." US Const, art I, § 8, cl 3. According to the United States Supreme Court, there are three broad categories of activity that Congress may regulate under its commerce power: (1) Congress may regulate the use of the channels of interstate commerce, (2) Congress may regulate and protect the instrumentalities of interstate

commerce, or persons or things in interstate commerce, "even though the threat may come only from intrastate activities," and (3) Congress may regulate those activities having a substantial relation to interstate commerce. *US v Lopez*, 514 US 549, 558-559; 115 S Ct 1624; 131 L Ed 2d 626 (1995). In reaffirming Congress' plenary power over the channels and instrumentalities of interstate commerce, the Court indicated that a statute criminalizing the destruction of aircraft was an example of legislation that constitutionally regulated an instrumentality of interstate commerce. *Id*. at 558; see also *Robinson v Hartzell Propeller, Inc*, 326 F Supp 2d 631 (ED Pa, 2004).

We hold that Congress properly exercised its authority under the Commerce Clause when it enacted the GARA statute. We agree with the court in *Robinson, supra*, which rejected the plaintiffs' argument that GARA was not valid, and determined that GARA properly regulates an instrumentality of interstate commerce, that being aircraft. As the *Robinson* Court accurately stated:

> According to the Court in *Lopez*, "Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities." *Lopez*, 514 US at 558. Moreover, as an example of legislation that constitutionally regulated an instrumentality of interstate commerce, the *Lopez* Court cited a statute criminalizing the destruction of aircraft. *Id*. (citing *Perez v United States*, 402 US 146, 150; 28 L Ed 2d 686; 91 S Ct 1357 (1971)). [*Robinson, supra* at 668-669.]

The general aviation industry is certainly one that substantially affects interstate commerce. This is true because Congress can act to protect airplanes within our nation's airspace, and because airplanes have been recognized as instrumentalities of interstate commerce. *Ickes v Federal Aviation Administration*, 299 F3d 260, 263 (CA 3, 2002), citing *United States v McHenry*, 97 F3d 125, 127 (CA 6, 1996) and *United States v Bishop*, 66 F3d 569, 588 (CA 3, 1995). Therefore, plaintiff has failed to overcome the presumption that GARA was a constitutional exercise of Congress' Commerce Clause power. Moreover, because GARA is a valid exercise of Congress' power under the Commerce Clause, a power specifically delegated to Congress in the Constitution, "the Tenth Amendment expressly disclaims any reservation of that power to the States." *New York v US*, 505 US 144, 156; 112 S Ct 2408; 120 L Ed 2d 120 (1992).

Plaintiff next argues that GARA violates equal protection principles[6] because there is no rational reason that warrants discrimination against the general aviation public while leaving remedies available to the commercial aviation public, and because there is no rational reason for creating an eighteen-year statute of repose when the average age of a general aviation aircraft is typically over thirty years old.

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[6] "Both the federal and state constitutions guarantee equal protection, and afford similar protection." *Westlake Transport, Inc v PSC*, 255 Mich App 589, 616; 662 NW2d 784 (2003).

The rational basis test is used to review equal protection challenges to social or economic legislation. *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 717; 575 NW2d 68 (1997).[7] Rational basis review tests whether the legislation is reasonably related to a legitimate governmental purpose. *TIG Ins Co, Inc v Dep't of Treasury*, 464 Mich 548, 557; 629 NW2d 402 (2001). "Under the rational-basis test, a statute will ordinarily be sustained if it can be said to advance a legitimate governmental interest, even if the law seems to be unwise or works to the disadvantage of a particular group, or if the rationale seems to be tenuous." *Westlake Transport v PSC*, 255 Mich App 589, 617; 662 NW2d 784 (2003). "The rationale behind the classification may be supported by facts either known or reasonably assumed, even if those facts may be debatable." *Id.* "A legislative classification may not be set aside if any set of facts may reasonably be conceived to justify it." *Id*.

Contrary to plaintiff's contention, we conclude, as have several other courts, that there was a rational basis for the enactment of GARA. As stated by the *Robinson* Court:

> There is at least one conceivable reason why Congress chose to distinguish between the general aviation industry and other sectors of the aviation industry when enacting GARA. According to the legislative history, "this is not just about small planes. The small plane industry is the genesis of the entire aviation industry. That is why companies like Boeing and McDonnell Douglas see this bill as critical to U.S. preeminence in the commercial aviation industry." 140 Cong Rec H 4998, H5001 (June 27, 1994) (statement of Rep. Glickman). Congress could rationally decide that it wanted to provide limited protection for this vulnerable segment of the aviation industry without limiting tort claims against commercial carriers in the hopes that the revitalization of the general aviation industry would spread to other sectors of the aviation industry. [*Robinson*, *supra* at 669.]

Further, in *Lyon v Agusta SPA*, 252 F3d 1078, 1084 (CA 9, 2001), citing H R Rep No 103-525 pt I, at 1-4, reprinted in 1994 USCCAN 1638, 1638-1641, the court noted, "It is apparent that Congress 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." Accord: *Mason v Schweizer Aircraft Corp*, 653 NW2d 543, 547 (Iowa, 2002), where the Iowa Supreme Court documented Congress' intent in passing the GARA statute of repose.

We also reject plaintiff's claim that the adoption of an eighteen-year statute of repose was irrational because the average age of general aircraft is over thirty years. The *Lyon* Court, in concluding that the GARA was "assuredly rational," indicated the following:

> [W]hen we focus, as Congress did, on the need to revitalize a flagging industry, it is difficult to see any real unfairness in the decision to cut the infinite-

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[7] The GARA falls within the category of economic legislation. *Robinson, supra* at 669.

liability tail, even though a cause of action might have accrued before selection of the length of the period of repose was made. [*Id*. at 1086.]

We conclude, as did the *Robinson* and *Lyon* Courts, that Congress had a rational basis for protecting a vital industry by imposing a limitation period to bringing lawsuits against certain segments of the general aviation industry. Accordingly, plaintiff has failed to demonstrate an equal protection violation.

Plaintiff next argues that GARA violates due process guarantees because it fails to provide plaintiff with an alternative right or remedy before the aircraft reaches its average age. To implicate substantive due process, plaintiff must demonstrate the presence of a liberty or property interest to which the protections of due process attach. *Curtis v Oklahoma City Pub School Bd of Ed*, 147 F3d 1200, 1215 (CA 10, 1998). We agree with the *Lyon* Court's pronouncement that "although a cause of action is a 'species of property, a party's property right in any cause of action does not vest until a final unreviewable judgment is obtained.'" *Lyon*, *supra* at 1086 (citations omitted). Plaintiff has failed to demonstrate the presence of a property interest to which the protection of due process may attach, as she has no vested right in the cause of action; therefore, plaintiff's claim for a violation of her due process rights fails. Furthermore, as previously stated, the statute bears a reasonable relation to a permissible legislative objective, and therefore does not violate due process. *Mahaffey v Attorney General*, 222 Mich App 325, 344-345; 564 NW2d 104 (1997).

Finally, plaintiff contends that GARA is unconstitutional because it precludes free access to both federal and state courts by barring a cause of action before it comes into existence, and because it violates her state constitutional right to a jury trial. In rendering such a broad statement, plaintiff merely indicates that such a right exists along with the conclusive statement that other states have struck down statutes of repose. Plaintiff has failed to demonstrate how such a violation exists and has failed to support her position with any analysis. "An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003). Accordingly, we decline to address this issue, as it is effectively waived on appeal.

III. Teledyne and Lear Romec

Plaintiff next contends that the trial court improperly granted summary disposition in favor of Teledyne and Lear Romec. We disagree.

A. Standard of Review

The parties agree that this case was dismissed against the GARA defendants pursuant to a motion for summary disposition, which we review de novo.[8] *Schmalfeldt v North Pointe Ins Co*,

[8] In the lower court, the GARA defendants brought a motion to dismiss, which was provisionally granted pending the completion of discovery. Subsequently, plaintiff filed a brief on the applicability of GARA pursuant to court order. In response to plaintiff's brief, Cessna likened its response to a motion for summary disposition, noting that it had been provisionally dismissed (continued…)

469 Mich 422, 426; 670 NW2d 651 (2003) (motion for summary disposition reviewed de novo). Additionally, this Court reviews issues of statutory interpretation de novo. *Oade v Jackson Nat'l Life Ins Co*, 465 Mich 244, 250; 632 NW2d 126 (2001).

B. General Discussion of GARA

Plaintiff contends that the GARA statute of repose does not bar action against Teledyne and Lear Romec in the instant case because the Teledyne engine was less than eighteen years old and because the engine, including the fuel pump, was overhauled one to two years prior to the crash. We must, therefore, look to the pertinent sections of the GARA statute in order to determine whether it acts to bar suit against Teledyne and Lear Romec.

In general, "GARA is a statute of repose which prohibits lawsuits against aircraft manufacturers arising out of accidents involving any general aviation aircraft or component part which is more than eighteen years old." *Bain v Honeywell International, Inc*, 167 F Supp 2d 932, 936 (ED Tex, 2001). In particular, the statute provides, in relevant part:

> 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 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—
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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
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> "(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. [PL 103-298, 108 Stat 1552, Section 2(a).]

"For purposes of this Act . . . the term 'limitation period' means 18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft . . . ." [PL 103-298, 108 Stat 1552, Section 3(3).]

(…continued)

earlier. Regardless of whether the trial court's order was entered under a motion to dismiss or a motion for summary disposition, review is de novo.

C. Application to Teledyne[9] and Lear Romec

Plaintiff argues that GARA does not apply to Teledyne because the engine was less than eighteen years of age, and with respect to the engine driven fuel pump, that the GARA was rolled as a result of the 1994 overhaul of the engine to factory new specifications and the 1993 engine driven fuel pump overhaul. The trial court determined that plaintiff failed to present evidence that the engine was the cause of the accident, and dismissed Teledyne from the action. We find that the trial court properly granted summary disposition in favor of Teledyne on the basis that GARA bars suit against it.

As a preliminary matter, we note that there is no dispute that the right-side engine was manufactured by Teledyne in 1980; hence, if plaintiff demonstrated in the lower court proceedings that the accident was caused due to right engine failure, GARA would not apply because the accident was less than eighteen years after the engine's manufacture. However, if plaintiff focused not on the engine, but on the fuel pump alone as the cause of the crash, plaintiff's claim against Teledyne would be subject to the GARA requirements because the fuel pump was manufactured in 1972, or more than eighteen years prior to the accident.[10]

Plaintiff initially alleged not only that the fuel pump was the cause of the accident, but also that the engine was, in part, a cause of the accident. According to plaintiff's brief on appeal, however, "the subject aircraft's right engine driven fuel pump failed, which caused a near immediate loss of control due, in part, to alleged defects in the Cessna 421B aircraft's single engine handling qualities and characteristics." Further, in plaintiff's brief submitted to the trial court regarding the applicability of GARA, plaintiff, although again alleging that the engine was defective, presented no evidence to support this contention. According to plaintiff's expert witness, Donald Sommer, "[t]he right engine driven fuel pump coupling was found to be broken and its shaft seized in the carbon bearing," and "[l]oss of the right engine driven fuel pump would cause an engine power interruption." Clearly, then, plaintiff's evidence focused on the allegation that the fuel pump was the defective product. No evidence was submitted to establish that the engine itself was defective.

We further reject plaintiff's contention that because the engine driven fuel pump is an integral part of the engine, Teledyne should be held liable for the failure of the fuel pump. Plaintiff has simply presented no evidence to support her claim that the engine was the cause of the accident rather than the engine driven fuel pump. Certainly, the fuel pump is an integral part of the engine, as is the engine an integral part of the plane itself. Were we to adopt plaintiff's

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[9] We decline to review any documents submitted with plaintiff's motion for reconsideration regarding the dismissal of Teledyne. The documents were not submitted to the trial court prior to the dismissal of Teledyne. Consequently, because this evidence was not before the trial court when it decided the motion for summary disposition, we will not consider it on appeal. *Quinto v Cross and Peters Co*, 451 Mich 358, 366-367 n 5; 547 NW2d 314 (1996); *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003).

[10] Plaintiff concedes in her brief on appeal that the right engine driven fuel pump was manufactured more than eighteen years before the accident.

reasoning regarding this issue, we would effectively permit plaintiff to circumvent the GARA statute of repose by allowing plaintiff to bring suit against any manufacturer of a part when a sub-part (that is the actual cause of an accident) was replaced or added to it, even if the original part was over eighteen years of age. Case law, however, focuses on the component that allegedly caused the crash, not the larger part that encompasses many smaller components, one of which was the allegedly deficient component. *Robinson*, *supra* (focus on maintenance manual and propeller); *Lyon*, *supra* (focus on manual as new part of aircraft); *Bain*, *supra* (suit precluded against helicopter manufacturer because twenty-eight years had passed since manufacture of helicopter and no duty to inspect fractured screws on fuel content unit); *Caldwell v Enstrom Helicopter Corp*, 230 F3d 1155 (CA 9, 2000) (focus on manual as new part to defeat GARA); *Hiser v Bell Helicopter Textron, Inc*, 111 Cal App 4th 640, 651; 4 Cal Rptr 3d 249 (2003) ("replacement of less than all the components of a system does not trigger a new limitation period under GARA with respect to defects in components of the system not replaced."). Accordingly, the trial court properly dismissed Teledyne on the basis that plaintiff failed to present evidence that demonstrates the engine itself caused the accident.

Finally, with respect to plaintiff's claim that, regardless of whether Teledyne[11] or Lear Romec manufactured the fuel pump, the overhaul of the fuel pump rendered the part "new" for purposes of the GARA, we find that the trial court properly concluded that the overhaul did not render the part "new" for purposes of the GARA.

Plaintiff contends that the GARA statute of repose should not have been applied to Teledyne or Lear Romec because the right engine driven fuel pump installed in 1972 was overhauled less than two years before the crash, thus rolling the GARA statute. We hold to the contrary, and conclude that the trial court properly dismissed plaintiff's claims regarding the engine driven fuel pump because the overhaul of a part does not "retoll" the GARA statute of repose.

We must first look to the language of the statute. This Court applies the following principles when interpreting statutes:

> "A fundamental principle of statutory construction is that 'a clear and unambiguous statute leaves no room for judicial construction or interpretation.' *Coleman v Gurwin*, 443 Mich 59, 65; 503 NW2d 435 (1993). The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. *Sun Valley Foods Co v Ward*, 460 Mich

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[11] To the extent that plaintiff argues that Teledyne's overhaul specifications were followed during the overhaul of the engine driven fuel pump, this allegation has no effect on our decision. Although the specifications may indicate that the overhaul of a part or sub-part may leave it in a "same as new" or "as new" condition, this does not render the part "new" for purposes of GARA. Plaintiff seemingly rejects the argument that the overhaul specifications and standards "retolled" GARA, and claims that the standards and specifications were only referred to for reference purposes with respect to the argument that the overhaul itself "retolled" the GARA statute.

> 230; 596 NW2d 119 (1999). When a legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and there is no need for judicial construction; the proper role of a court is simply to apply the terms of the statute to the circumstances in a particular case. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995)." [*Birchwood Manor, Inc v Comm'r of Revenue*, 261 Mich App 248, 258; 680 NW2d 504 (2004).]

Focusing on the plain language of the statute, we find that the overhaul of an aircraft part or component does not render it "new" for purposes of rolling the GARA statute. According to the plain language of the statute, a new eighteen-year period begins on the date of completion of the replacement part or when a new part is added to that aircraft if that part is alleged to have caused death, injury, or damages.

> [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 . . . 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. [PL 103-298, 108 Stat 1552, Section 2(a)(2).]

Contrary to plaintiff's argument, the GARA statute is only rolled if a "new" part replaces an old part or is added to the aircraft and if the "new" part is alleged to have caused the accident. The *Robinson* Court rejected a similar argument:

> "A holding that would toll the statute of repose on a product on account of an overhaul of a critical component of that product would effectively eviscerate the statute of repose as it applied to many types of products. For example, aircraft are required by statute to be routinely overhauled, and certain critical parts must be repaired or replaced on a regular basis. If every time a critical component was overhauled, or even replaced, the statute of repose began anew thus permitting an individual to sue for a design flaw, then the manufacturer of the aircraft would never be afforded the protection of the statute of repose. . . ."
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> This Court agrees with the rationale of *Butchkosky* on this issue. Second, the article's [Hedrick, *A Close and Critical Analysis of the New General Aviation Revitalization Act*, 62 J Air L and Com 385 (1996)] conclusion conflicts with the language of the statute. Under the statute, the statute of repose starts when a new component "replaces" another component or is "added" to the aircraft. GARA § 2(a)(2). An overhauled propeller does not replace another propeller and it is not added to the aircraft. It is removed for maintenance and returned to the aircraft. Finally, the concern of the author about shielding maintenance organizations from liability is not justified. Under the statute, only "manufacturers" of aircraft or components are shielded by the statute of repose, not repair facilities. [*Robinson*,

supra at 663, quoting *Butchkosky v Enstrom Helicopter Corp*, 855 F Supp 1251 (SD Fla, 1993).]

We once again agree with the reasoning in *Robinson*, and conclude that an "overhaul" of a part does not render it "new" for purposes of the GARA. Further, an "as new" or "same as new" condition, which plaintiff urges is the condition of a part following an overhaul, is not "new," and clearly is not encompassed by the plain language of the GARA. We simply are not permitted to read into the statute language not included by Congress. Finally, we reject plaintiff's argument that the word "new" does not modify "or other part." Contrary to plaintiff's argument, the word "new" modifies each of the terms in the disjunctive series, and not just the term "component." Therefore, the trial court properly granted summary disposition in favor of Teledyne and Lear Romec.[12]

IV. Cessna[13]

A. Misrepresentation Exception to GARA

Although we have previously set forth the basic provisions of the GARA, we now turn to one of the exceptions to the general provisions, which plaintiff alleges applies in this case against Cessna. The relevant exception to the instant case states as follows:

> Subsection (a) does not apply . . . if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certification or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, subassembly, or other part of an aircraft knowingly misrepresented to the Federal Aviation Administration, or concealed or withheld from the Federal Aviation Administration, required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered . . . . [PL 103-298, 108 Stat 1552, Section 2(b)(1).]

The trial court first determined that regardless of whether the word "knowingly" specifically applies to information that is "concealed" or "withheld" from the FAA, that the

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[12] We also reject plaintiff's contention that *Campbell v Parker-Hannifin Corp*, 69 Cal App 4th 1534; 82 Cal Rptr 2d 202 (1999) stands for the proposition that a complete overhaul of a part is a "replacement part for GARA purposes." Contrary to plaintiff's argument, *Campbell* specifically dealt with the issue of whether an action against an aircraft manufacturer was time-barred because new time periods were triggered by the replacement of certain other parts. *Id*. at 1546. The court determined not that an overhaul rendered a part new and retolled the statute, as plaintiff seemingly claims, but that the actual *replacement* of those parts triggered a new time period only for the entities that manufactured those parts. *Id.*

[13] Similar to the issues raised against Teledyne and Lear Romec, we review these issues de novo.

terms themselves imply a knowing or intentional action. The trial court then stated the following:

> [I]t would appear to the [sic] fact that all of the information upon which Cessna based its conclusions clearly was provided to the Federal Aviation Administration. And it would appear that the arguments of the plaintiffs in part is that maybe it was concealed in all of the details, sort of like Poe's purloined letter; just hold it out in the open and perhaps no one will see it. However, it is the same data that was provided to the Federal Aviation Administration that plaintiff's own experts, particularly Dr. Kennedy, used to reach his conclusions. The Court has a great deal of difficulty finding fault with the method used initially more than 18 years ago to provide certification data to the Federal Aviation Administration now being used that many years later to say that the conclusion reached by Cessna was in error. The Court would conclude that if, as the charts indicated, that there may have been – and I recognize that there may be a dispute as to the implications of the facts, but even if there were a mathematical error, it was in fact disclosed that it was not a withholding, or at least the data upon which the mathematical error was premised certainly was provided and disclosed.

Finally, the trial court noted that if the data presented pertained to the aircraft as it was manufactured, it could not assume that the same data would be applicable after additions, modifications, or changes were made, which could have a profound effect on the performance of the airplane itself.

The *Robinson* Court identified three elements necessary for a plaintiff to prove with respect to GARA's "knowing misrepresentation or concealment or withholding" exception. *Robinson*, *supra*. The court explained that the plaintiff must present evidence that the defendant knowingly (1) misrepresented, (2) concealed, or (3) withheld the design defect in its communications with the FAA. *Id*., citing *Rickert v Mitsubishi Heavy Industries*, 929 F Supp 380, 384-385 (D Wyo, 1996).

Plaintiff argues that the trial court erred in determining that the exception did not apply because she was able to demonstrate that Cessna knowingly increased the horsepower and decreased the drag during its single engine testing phases to demonstrate that a pilot of ordinary skill and strength could control the aircraft with one engine inoperative. According to plaintiff, Cessna certified the 421B aircraft in the Type Inspection Report (TIR), which was relied on by the FAA, when Cessna knew it did not and could not meet those regulations without the knowing misrepresentation or concealment. In support of her arguments, plaintiff relies on the affidavits of her expert witnesses, Donald Kennedy and Donald Sommer.

We agree with plaintiff and find that a genuine issue of material fact exists in this case.[14] First, Kennedy indicated in his affidavit that CAR (Civil Air Regulation) 2.85(b), which applies

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[14] Cessna conceded in its brief in response to plaintiff's brief regarding the applicability of GARA, that "[n]either side has asserted that this Court must find for itself whether Cessna has (continued…)

to an aircraft's ability to climb with an inoperative engine, and is required information pertaining to the certification of the aircraft at issue in this case, was knowingly misrepresented, or concealed and withheld from the FAA. Specifically, Kennedy stated that the engines used in the Cessna aircraft are approved for all operations at 375 horsepower; however, Cessna represented data to the FAA based on engine horsepower in excess of four hundred horsepower. Kennedy concluded that the misrepresentation of data, in utilizing four hundred horsepower rather than 375 horsepower, was the only way Cessna could meet the single engine climb requirements contained in the CAR. Kennedy also indicated that Cessna's data was then used to calculate the zero lift drag of the aircraft with one operative engine, and that this was used to calculate the data in the Pilot Operating Handbook. Kennedy concluded that Cessna's use of increased horsepower and reduced aerodynamic drag led the FAA and pilots into believing that the aircraft was capable of performing better than its actual capabilities in the event of single engine operation.

In a supplemental affidavit, Kennedy indicated that the aircraft's TIR (Type Inspection Report) provided operating limitations for the engine at a maximum continuous power of 375 horsepower from each engine, although horsepower greater than that was utilized by Cessna in computing the climb rate with an inoperative engine. Kennedy concluded that there were three areas of misrepresentation, including the use of horsepower above the limited value that certification allowed, the lower zero lift drag with one inoperative engine to provide for increased climb performance, and that the aircraft, certified under Delegation Option Authority (DOA),[15] met the federal regulations when it did not. Kennedy further indicated that the misrepresentations of aircraft data misled Hinkle into believing that the aircraft was safe to fly with one inoperative engine.

According to Sommer, the misrepresentation by Cessna of single engine performance and the handling characteristics of the aircraft could be directly related to the cause of the accident because the misrepresented data was utilized in the Pilot's Operating Handbook, which is in turn relied upon by Hinkle for performance expectations, and because the alleged misrepresentation of the single engine climb performance allowed the pilot to falsely believe that a margin between the climb rate and the minimum control speed existed. Sommer further opined that the margin between the minimum control speed and the climbing flight, under the conditions experienced by Hinkle, would render it increasingly difficult to maintain control of the aircraft without being forced to descend because it is necessary to maintain airspeeds within five knots during an engine failure.

Although Cessna argues that the data relied upon by Kennedy was provided to the FAA (thus negating the existence of concealment or withholding of information), Kennedy indicated that Cessna utilized the data in order to certify the aircraft, while it did not meet the certification

(…continued)

knowingly misrepresented, concealed or withheld required information from the FAA which is causally related to the accident. Instead, the parties appear to be in agreement that this question is ultimately one for the trier of fact. In the event that the case should proceed to trial, Cessna would assert that the jury should make its finding on whether § 2(b)(1) is satisfied before reaching a verdict on any product liability/negligence issues."

[15] According to Kennedy, it is of significant importance that the aircraft was certified under the DOA because Cessna, in effect, certifies its own aircraft.

requirements by maintaining a continuous maximum horsepower of 375. Because Cessna was operating under its DOA authority to certify its aircraft, it is plausible that Cessna supplied data utilizing greater horsepower than the maximum amount allowed, while certifying to the FAA that it met all of the requirements necessary. Cessna further argues that Kennedy's conclusions are unreliable; however, this appears to be an issue of material fact, as Cessna's experts merely counter and attempt to defeat Kennedy's calculations.[16] Additionally, Cessna contends that plaintiff failed to demonstrate a causal relationship between the alleged misrepresentation and the climb rate. However, plaintiff's expert witnesses opined that there was a causal relationship, and supported these conclusions in their respective affidavits.[17] "Courts may not make findings of fact or weigh credibility in deciding a summary disposition motion." *Echelon Homes LLC v Carter Lumber Co*, 261 Mich App 434, 440; 683 NW2d 171 (2004). As the function of this Court is not that of factfinder, we reverse the trial court's grant of summary disposition in favor of Cessna.

Finally, we reject plaintiff's argument that the word "knowingly" modifies only the word "misrepresented," rather than the additional words, "concealed" and "withheld." Regardless of whether the words "concealed" and "withheld" are also modified by the word "knowingly," we conclude that the words connote, by definition, a knowing or intentional action. The word "conceal" is defined as: "To hide, secrete, or withhold from the knowledge of others. To withhold from utterance or declaration. To cover or keep from sight. To hide or withdraw from observation, or prevent discovery of." Black's Law Dictionary (6th ed). Additionally, the word "withhold" is defined: "To retain in one's possession that which belongs to or is claimed or sought by another. To omit to disclose upon request; as, to withhold information. . . ." Black's Law Dictionary (6th ed). Both words connote an intentional or knowing action on behalf of the party engaged in the concealment or withholding; therefore, it matters not whether the word "knowing" specifically modifies these words. Regardless, as plaintiff's experts relied on the data provided by Cessna to render its conclusions, plaintiff would be hard-pressed to say that such information was withheld or concealed from the FAA. It is apparent that the focus of plaintiff's arguments was on whether there had been a "knowing misrepresentation" rather than a concealment or withholding of information.

B. Supplement Manual as a New Part to Defeat GARA

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[16] Cessna concedes on appeal that there may be disagreements regarding the interpretation of the data, but indicates that the GARA exception is not triggered by such differing interpretations. This concession again leads us to the conclusion that a genuine issue of material fact exists due to the fact that there are different interpretations of the data, and the possibility that Cessna, certifying its own aircraft, agreed that it was in compliance with the certification requirements. It is not for this Court to determine which of the expert witnesses is to be believed regarding their respective interpretations of the data.

[17] We reject Cessna's argument that any causal link between the alleged misrepresentation and the accident was broken by post-manufacture changes in the aircraft. This is certainly a genuine issue of material fact, as Sommer indicated that the addition of the vortex generator kit was not significant, nor would it create a noticeable effect for the pilot.

Following the dismissal of Cessna, plaintiff brought a motion, pursuant to MCR 2.612, to vacate the dismissal of Cessna on the basis that plaintiff's decedent allegedly utilized a 1985 Cessna Pilot Safety and Warning Supplement Manual (1985 Supplement Manual). The trial court denied plaintiff's motion. This Court reviews a trial court's decision whether to set aside an order of dismissal for an abuse of discretion. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 393; 573 NW2d 336 (1997).

Plaintiff, relying on *Caldwell*, contends that the 1985 Cessna Pilot and Safety Warning Supplement Manual was a "part" of the aircraft for purposes of GARA, which would renew the statute of repose. The trial court determined the following:

> In this particular case, the Court would determine that the safety manual that Cessna subsequently issued, was not a manual, as contemplated by the federal regulations. Was not required to be part of the airplane. That it was subsequently issued general information regarding, not this specific airplane or how to fly this particular airplane, but appeared to be more of a generic description of certain operational characteristics of all single aircraft – single-engine aircraft.

In *Caldwell*, the plaintiffs alleged that the helicopter flight manual was a defective "system" or "part" of the helicopter that caused the accident in that case because it did not include relevant information regarding the limits on the fuel tanks' ability to burn the last two gallons of fuel. *Caldwell, supra* at 1156-1157. The court indicated that the plaintiffs did not bring a "failure to warn" claim, which was an invalid claim, but rather that the revised manual itself was defective and the cause of the accident. *Id*. at 1157.

After determining that the flight manual was a "part" for purposes of the aircraft, the court indicated that a "revision to the manual does not implicate GARA's rolling provision, however, unless the revised part 'is alleged to have caused [the] death, injury, or damage.'" *Caldwell, supra* at 1158. The court concluded that "if Defendant substantively altered, or deleted, a warning about the fuel system from the manual within the last 18 years, and it is alleged that the revision or omission is the proximate cause of the accident, then GARA does not bar the action." *Id*.

Plaintiff argues that because the 1985 Supplement Manual was clearly required to be in the 421B aircraft, it specifically referred to the single engine handling qualities and characteristics, and it was issued a part number, it is a "part" for purposes of GARA. Plaintiff further contends that the owner advisory provided that the manual was to be kept together with the Owner's Manual/Pilot Operating Handbook, and that Cessna assigned a part number to the 1985 Supplement Manual, which is evidence that it is a "part" for purposes of GARA.

We find that the trial court did not abuse its discretion in denying plaintiff's motion to vacate the GARA opinion and orders as they relate to Cessna based on newly discovered evidence. Although a part *may* be something like an "aircraft manual," *Lyon, supra* at 1088, plaintiff has failed to demonstrate that the 1985 Supplement Manual was a "part" to the 421B aircraft at issue in this case.

Plaintiff contends that the Cessna service letters combined with Cessna's issuance of a part number to the 1985 Supplement Manual indicate that the manual was required to be in the

421B aircraft, and because it specifically made reference to single engine handling qualities and characteristics, the 1985 Supplement Manual was a part of the aircraft. Plaintiff has provided no evidence that the 1985 Supplement Manual related to that specific airplane or that it provided specific instructions for the particular airplane in this case. Further, as Cessna indicates, plaintiff has failed to demonstrate or even allege a specific causal connection between the crash and the alleged false or inadequate warnings. Even if the decedent in this case utilized the 1985 Supplement Manual, plaintiff has drawn no connection between that usage and the crash itself. Indeed, plaintiff did not even identify a specific warning in her motion to vacate or on appeal that she claims was inadequate or false and which allegedly caused the crash in this case; rather, plaintiff relies on her conclusive statement that the 1985 Supplement Manual contained a misrepresentation or false information regarding the single-engine handling ability. Finally, although plaintiff alleged that the supplement was a new "part" for purposes of GARA, plaintiff has provided no evidence to demonstrate that the supplement added to or replaced a particular provision of the original flight manual. See *Robinson*, *supra* (because the plaintiff failed to present evidence that the defendant deleted or altered specific instructions regarding overhaul of soft alloy blades, GARA was not retolled because no new "part" was added or replaced on the aircraft); *Caldwell*, *supra* (GARA does not bar action if the defendant "substantively altered, or deleted" specific warning about fuel system from the manual within the last eighteen years and the revision or omission is the proximate cause of the accident); *Carolina Industrial Products, Inc v Learjet, Inc*, 189 F Supp 2d 1147 (D Kan, 2001) (manual's failure to warn insufficient to avoid GARA); *Alter v Bell Helicopter Textron*, 944 F Supp 531 (SD Tex, 1996) (failure to warn insufficient to avoid GARA); *Mason*, *supra* at 552-553 (revision to manual does not retoll GARA unless revisions are substantive and causally related to accident). Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion to vacate.

C. Written Warranty Exception of GARA

Finally, plaintiff argues that a question of fact existed regarding the issue of whether Cessna breached a written warranty pursuant to the written warranty exception of GARA. Plaintiff contends that Cessna represented that the aircraft was satisfactory and that it met the requirements of CAR 3 and FAR 23, and that this warranty was breached because those requirements were not actually met. We disagree.

Although raised in plaintiff's complaint, the trial court declined to address the warranty issue, noting that no issue was made of the warranty. Similarly, on appeal, plaintiff has merely raised the issue and has provided no case law and little, if any, analysis regarding this specific issue. It is improper for an appellant to announce her position and leave it to this Court to discover and rationalize the basis for her claims or unravel and elaborate for her her arguments, and then search for authority either to sustain or reject his position. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998). Accordingly, plaintiff has waived this issue for appellate review, and we decline to address it.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood