

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LISABETH MOORE, Individually and LISABETH)
MOORE, as Personal Representative of the Estate of)
Daniel Hart, Deceased,)
)
And)
) C.A. No. N09C-12-010 MMJ
LISABETH MOORE, as Next Friend of)
ZOE HART-MOORE,)
)
Plaintiffs,)
)
v.)
)
HAWKER BEECHCRAFT CORPORATION,)
)
Defendant.)

Submitted: November 10, 2011
Decided: December 15, 2011

On Defendant Hawker Beechcraft Corporation’s Motion for Summary Judgment
GRANTED

On Plaintiff’s Motion for Judgment on the Pleadings
DENIED AS MOOT

OPINION

Michael J. Goodrick, Esquire, Michael J. Goodrick, P.A., Wilmington, Delaware; Of
Counsel: Arthur Alan Wolk, Esquire (argued), Cynthia M. Devers, Esquire, The Wolk
Law Firm, Philadelphia, Pennsylvania, Attorneys for Plaintiffs

Katharine L. Mayer, Esquire, McCarter & English, LLP, Wilmington, Delaware; Of
Counsel: Michael G. Jones, Esquire (argued), Martin, Pringle, Oliver, Wallace & Bauer,
LLP, Wichita, Kansas, Attorneys for Defendant

JOHNSTON, J.

PROCEDURAL CONTEXT

This litigation arises from the death of Daniel Hart, which occurred on December 4, 2007 at the New Castle County Airport. Hart, an experienced pilot, died in an accident involving a Beech Model 60 Duke aircraft manufactured by Defendant Hawker Beechcraft Corporation.

Plaintiffs (decedent's estate and next of kin) filed suit on December 1, 2009 alleging, *inter alia*, negligence on the part of Hawker Beechcraft Corporation. Plaintiffs seek damages under Delaware's Wrongful Death Statute and Survival Statute.

Hawker Beechcraft Corporation has moved for summary judgment, arguing that Plaintiffs' action is barred by the General Aviation Revitalization Act ("GARA"). GARA established an 18-year statute of repose against civil actions for damages involving general aviation aircraft.

Plaintiffs respond that even if GARA's statute of repose is implicated, the knowing misrepresentation exception and the new parts exception apply, permitting prosecution of this action. Plaintiffs also contend that a cause of action exists under an express warranty theory. Plaintiffs have moved for judgment on the pleadings.

FACTUAL BACKGROUND

In 1969, Defendant Hawker Beechcraft Corporation (“HBC”) manufactured the Beech Model 60 Duke aircraft (“Subject Aircraft”). On October 30, 1970, ownership of the Subject Aircraft was transferred from HBC to Beechcraft Aviation Company, then to Beechcraft West Oakland, and finally to Skywater Lodge located in Glenbrook, Nevada. Delivery of the Subject Aircraft in Glenbrook, Nevada was completed on October 30, 1970. HBC has neither operated nor had possession of the Subject Aircraft since 1970.

On the morning of December 4, 2007, Daniel Hart was piloting the Subject Aircraft. Hart was an experienced pilot. He had logged approximately 1,158 flight hours (390.5 of which were in the Subject Aircraft). It is undisputed that on the morning of the accident, the Subject Aircraft’s flaps became asymmetric, or unsynchronized, due to a defect in the 90° drive. Specifically, a key on the output shaft of the right flap’s 90° drive separated from the output shaft. This separation, or fracture, resulted in the right flap’s inability to respond to the Subject Aircraft’s flap control system.

As a result of the asymmetric flap condition, Hart lost control of the Subject Aircraft. The Subject Aircraft subsequently crashed, killing Hart.

STANDARD OF REVIEW

Summary judgment is granted only if the moving party establishes that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.¹ All facts are viewed in a light most favorable to the non-moving party.² Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.³ When the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.⁴ If the non-moving party bears the burden of proof at trial, yet “fails to make a showing sufficient to establish the existence of an element essential to that party’s case,” then summary judgment may be granted against that party.⁵

ANALYSIS

General Aviation Revitalization Act⁶

In 1994, Congress enacted GARA in an effort to “revitalize” the general aviation industry following a serious and precipitous decline in the manufacture and sale of general aviation aircraft by United States

¹ Super. Ct. Civ. R. 56(c).

² *Hammond v. Colt Indus. Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).

³ Super. Ct. Civ. R. 56(c).

⁴ *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

⁵ *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

⁶ Pub. L. No. 103-298, 108 Stat. 1552 (codified as amended at 49 U.S.C. § 40101 note) (hereinafter “GARA”).

companies.⁷ GARA established a statute of repose to protect the manufacturers of general aviation aircraft and parts “from long-term liability in those instances where a particular aircraft has been in operation for a considerable number of years.”⁸ In essence, GARA “attempts to strike a fair balance by providing some certainty to manufacturers, which will spur the development of new jobs, while preserving victims' rights to bring suit for compensation in certain particularly compelling circumstances.”⁹

Section 2(a) of GARA, which sets forth the statute’s basic limitation on civil actions, provides, in relevant part:

Section 2. Time limitations on civil actions against aircraft manufacturers.

(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 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 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

⁷ *Burton v. Twin Commander Aircraft LLC*, 254 P.3d 778, 783-84 (Wash. 2011) (citing *Burroughs v. Precision Airmotive Corp.*, 78 Cal.App.4th 681, 690 (2000)).

⁸ *Michaud v. Lyne-Stricker-Boulanger*, 2001 WL 34083885, at *1 (Del. Super.) (citing *Burroughs*, 78 Cal.App.4th at 689).

⁹ *Burroughs*, 78 Cal.App.4th at 691.

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft;
or

(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.

Section 3 of GARA defines the applicable limitation period as 18 years. By establishing an 18-year time bar, GARA implicitly acknowledges that any design or manufacturing defect not prevented or identified by the FAA by then should, in most instances, have manifested itself.¹⁰ Essentially, GARA “recogni[zes] that, after an extended period of time, a product has demonstrated its safety and quality, and that it is not reasonable to hold a manufacturer legally responsible for an accident or injury occurring after that much time has elapsed.”¹¹

A plaintiff may overcome GARA’s bar if one of the exceptions set forth in Section 2(b) applies. Two exceptions are pertinent to this case – the knowing misrepresentation exception and the new parts exception.

¹⁰ *Burroughs*, 78 Cal.App.4th at 691.

¹¹ *Id.* (citing *Altseimer v. Bell Helicopter Textron, Inc.*, 919 F.Supp. 340, 342 (E.D. Cal. 1996)).

Knowing Misrepresentation Exception

Plaintiffs first contend that HBC is barred from seeking immunity under GARA's statute of repose because HBC knowingly misrepresented pertinent information to the FAA and concealed material information from the FAA.

GARA's knowing misrepresentation exception offers no repose if:

[T]he claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type 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....¹²

A plaintiff, seeking to invoke the knowing misrepresentation exception to the GARA statute of repose, has the burden of pleading with specificity and proving the following five elements: (1) the manufacturer had actual or constructive knowledge of information relevant to FAA type certificate or continuing airworthiness obligations; (2) the manufacturer knowingly misrepresented, concealed or withheld the information from the FAA; (3) the information was required by the FAA; (4) the required

¹² GARA § 2(b)(1) (emphasis added).

information was material and relevant to the performance, maintenance or operation of the aircraft; and (5) the knowing misrepresentation, concealment or withholding was causally related to the harm suffered.

To avail themselves of GARA's knowing misrepresentation exception, Plaintiffs first must prove that HBC *knowingly* misrepresented, concealed, or withheld required information from the FAA. "Knowledge, as a state of mind, applies to each of these forms of keeping information from the FAA – that is, 'knowingly' modifies each of the words 'misrepresented,' 'concealed,' and 'withheld' in the exception."¹³

Plaintiffs also must demonstrate that HBC was required to disclose the information which it withheld from the FAA. A manufacturer's reporting obligations commence when the initial certification of the aircraft is sought.¹⁴ These obligations, however, are ongoing and continuous,¹⁵ requiring a manufacturer to report specific failures, malfunctions, or defects that surface after the type certificate is issued.¹⁶

Plaintiffs further must prove that any alleged misrepresentation or concealment was causally related to the harm suffered. It is not sufficient to

¹³ *Burton*, 254 P.3d at 780.

¹⁴ *See* GARA § 2(b)(1).

¹⁵ *Hetzer-Young v. Precision Airmotive Corp.*, 921 N.E.2d 683, 698 (Ohio Ct. App. 2009).

¹⁶ 14 C.F.R. § 21.3. Section 21.3(c) delineates a list of specific occurrences that must be reported.

prove that the product caused the injury. The alleged misrepresentation, itself, must have been the proximate cause of injury.

As the movant, HBC bears the initial burden of demonstrating that Plaintiffs' suit is barred by GARA.¹⁷ If HBC satisfies this initial burden, the burden then shifts to Plaintiffs to set forth facts which show that the knowing misrepresentation exception applies.¹⁸ Specifically, Plaintiffs bear the "burden of pleading 'with specificity the facts necessary to prove,' and the burden to prove a knowing misrepresentation, concealment, or withholding."¹⁹ If Plaintiffs produce evidence sufficient to support a knowing misrepresentation claim, then it is highly unlikely that HBC, for purposes of summary judgment, will be able to rebut those facts.²⁰ In other words, if "[P]laintiff[s] present[] material facts in support of [their] claim, [HBC] can do little more than proffer contrary facts."²¹ Such a factual dispute renders summary judgment inappropriate.²²

¹⁷ *South Side Trust and Sav. Bank of Peoria v. Mitsubishi Heavy Indus., Ltd.*, 927 N.E.2d 179, 193 (Ill. App. Ct. 2010); *Willett v. Cessna Aircraft Co.*, 851 N.E.2d 626, 635 (Ill. App. Ct. 2006)); *Agape Flights, Inc. v. Covington Aircraft Engines, Inc.*, 2011 WL 2560281, at *3 (E.D. Okla.).

¹⁸ *South Side Trust*, 927 N.E.2d at 193; *Willett*, 851 N.E.2d at 635-36; *Burton*, 254 P.3d at 787.

¹⁹ *Burton*, 254 P.3d at 786 (citing GARA § 2(b)(1)).

²⁰ *Rickert v. Mitsubishi Heavy Indus., Ltd.*, 923 F.Supp. 1453, 1456 (D. Wyo. 1996).

²¹ *Id.*

²² *Id.* at 1456-57.

Plaintiffs' Contentions

Plaintiffs claim that HBC knowingly misrepresented, concealed, or withheld required information from the FAA concerning the Beech Model 60 Duke's ("Beech Duke") flap system when seeking initial certification. According to Plaintiffs, HBC represented that the Beech Duke's "flap system was interconnected despite knowing [that] the flap system was not interconnected and [was] prone to disengaging just as it had done in the large fleet of other Beech Models with the same basic flap system."

Plaintiffs contend that HBC continued to misrepresent information to the FAA by concealing known design defects with the Beech Duke. Specifically, Plaintiffs argue that HBC was obligated to report that the Beech Duke was not controllable in a right side split flap condition – information which HBC had obtained through approximately 107 Service Difficulty Reports ("SDRs").

Additionally, Plaintiffs argue that HBC misrepresented the flight safety of the Beech Duke to the FAA when flight testing was eventually performed. Plaintiffs claim that HBC manipulated the test procedure to obtain the most favorable conditions and flight parameters. By refusing to implement proper testing procedures, Plaintiffs contend that HBC concealed evidence that the aircraft had inherently dangerous flight characteristics in a

split flap condition. Plaintiffs further claim that despite HBC's knowledge that the Beech Duke may experience a split flap condition, HBC withheld information on how to cope with such an unsafe condition in its Pilot's Operating Handbook or Airplane Flight Manual.

Plaintiffs conclude that HBC's knowing misrepresentation, concealment, and withholding of required information from the FAA ultimately resulted in Hart's death.

FAA's Compliance Review Process

The FAA has promulgated a comprehensive set of regulations that delineate the minimum safety standards with which an aircraft manufacturer must comply before marketing its products.²³ The standards establish requirements for the design, materials, workmanship, construction, operation and performance of the aircraft, aircraft engines, and propellers.²⁴

A manufacturer wishing to introduce a new type of aircraft first must obtain FAA approval of the plane's basic design in the form of a type certificate ("TC").²⁵ In order to obtain a TC, the manufacturer must submit designs, drawings, test reports and computations to demonstrate that the

²³ *United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*, 467 U.S. 797, 805 (1984).

²⁴ 49 U.S.C. § 44701(a)(1).

²⁵ 49 U.S.C. § 44704(a)(1).

aircraft satisfies FAA regulations.²⁶ The manufacturer must demonstrate that the aircraft meets airworthiness standards, which is accomplished through ground and flight testing.²⁷ The manufacturer must show that the aircraft is safely controllable and maneuverable during all flight phases, and that it is possible for the aircraft to make a smooth transition from one flight condition to another without danger of exceeding the limit load factor, under any probable operating condition.²⁸ With respect to the airworthiness of the flap system, the manufacturer either must: (1) specify whether the main flap wings are synchronized by a mechanical interconnection; or (2) show that the aircraft has safe flight characteristics with the flaps retracted on one side and extended on the other.²⁹ If the FAA finds that the proposed aircraft design meets the minimum safety standards, a TC is issued.³⁰

Once the aircraft is produced,³¹ the owner must obtain an airworthiness certificate from the FAA.³² An airworthiness certificate indicates that the aircraft conforms to the type certificate and is in condition for safe operation.³³

²⁶ 14 C.F.R. §§ 21.17(a)(1), 21.21(b).

²⁷ 14 C.F.R. §§ 23.1, 23.141.

²⁸ 14 C.F.R. § 23.143.

²⁹ 14 C.F.R. § 23.701.

³⁰ 49 U.S.C. § 44704(a)(1); 14 C.F.R. § 23.21(b).

³¹ *See* 49 U.S.C. § 44704(c).

³² 49 U.S.C. § 44704(d)(1).

³³ 49 U.S.C. § 44704(d)(1); 14 C.F.R. § 21.183(b).

Because the FAA, alone, is unable to complete this complex compliance review process, the FAA may authorize the delegation of certain inspection and certification responsibilities to properly qualified private persons.³⁴ Those persons granted Delegation Option Authority (“DOA”), termed “designated engineering representatives,” serve as surrogates of the FAA and inspect, examine, and test aircraft for certification purposes.³⁵ Designated engineering representatives are typically employees of aircraft manufacturers who possess detailed knowledge of an aircraft’s design.³⁶

No Misrepresentation during Initial Certification of Subject Aircraft

The FAA issued a DOA to HBC, thereby allowing HBC to fulfill a portion of the FAA's certification role. On December 22, 1965, HBC applied to the FAA for a TC for the Beech Duke. As the DOA, HBC was charged with conducting all tests and inspections on the Beech Duke in order to determine its compliance with the regulations. On the Type Inspection Authorization, submitted as part of HBC’s application, HBC stated that the entire flap system was interconnected through a centralized drive motor, thus demonstrating compliance with Section 23.701.³⁷ Based on this representation, HBC was relieved of demonstrating that the Beech

³⁴ 49 U.S.C. § 44702(d).

³⁵ *Varig Airlines*, 467 U.S. at 807.

³⁶ *Id.*

³⁷ 14 C.F.R. § 23.701. The applicable regulations are those in effect in 1968.

Duke had “safe flight characteristics.” After reviewing the data submitted by HBC, the FAA issued a TC for the Beech Duke on February 1, 1968.

Plaintiffs are unable to identify any information that was misrepresented to the FAA. At his deposition, Plaintiffs’ own expert, Aaron G. “Tim” Olmsted, admitted that he could not point to a specific piece of information that had been withheld from the FAA concerning the flap system on the Beech Duke. Olmsted offered the following testimony:

Q: Can you identify me a specific piece of information that [HBC] had that it was required to give the FAA that it did not? For purposes of complying with 23.701.

A: I don’t think as we sit here today that I can do that....

* * *

Q: ...I’m trying to identify whether you as an expert in this case are going to be coming forward and identifying any pieces of information, that is discrete data points, that [HBC] knew that it was required to tell the FAA that it did not in the context of certification of the flaps in the Duke. And that’s it.

A: A specific document? I don’t have one.

The Court finds no evidence of misrepresentation to the FAA at the initial certification of the Beech Duke. Specifically, there is nothing in the record to suggest that HBC misrepresented, withheld, or concealed required information from the FAA regarding the flap system when applying for a TC. The Court therefore finds that Plaintiffs have failed to present sufficient evidence of misrepresentation by HBC to the FAA when applying for a TC.

No Misrepresentation in Subsequent Flight Testing

Plaintiffs argue that the flap system was not synchronized by a mechanical interconnection as represented by HBC. According to Plaintiffs, a flap system cannot be considered interconnected if it is prone to disengage. Plaintiffs contend that other aircraft models manufactured by HBC and equipped with the same basic flap system as the Beech Duke had experienced flap system disengagements in the field.

Taking all inferences in favor of Plaintiffs, even if Plaintiffs were able to establish a *prima facie* case of misrepresentation at the initial certification, subsequent flight testing by HBC makes this exception to the statute of repose inapplicable. In order to prove misrepresentation, Plaintiffs must demonstrate, *inter alia*, a causal relationship between any alleged misrepresentation and Hart's injury. Considering the specific facts and sequence of events in this case, the Court find that the subsequent flight testing severs any causal chain stemming from HBC's alleged misrepresentation at the initial certification.

Plaintiffs contend that HBC continued to misrepresent information to the FAA after the initial certification. Plaintiffs claim that HBC knowingly misrepresented, concealed or withheld information from the FAA concerning its subsequent flight testing procedures. In support of this

contention, Plaintiffs point to correspondence between HBC and the FAA, as well as the actual flight test conducted on the Beech Duke.

Beginning in late 1969, extensive communication ensued between the FAA and HBC concerning the flap system on the Beech Duke. By letter dated November 13, 1969, the FAA advised HBC that it had received a report of asymmetric flaps on a Beech Duke aircraft (“P-94 incident”). On December 11, 1969, HBC responded, stating that because the P-94 incident was “an isolated part failure caused by an undetermined system malfunction,” no flight testing was necessary. HBC maintained that the flap system was, in fact, interconnected.

In a follow-up letter dated January 13, 1970, the FAA requested that HBC demonstrate compliance with Section 23.701 by conducting flight testing. According to the FAA: “Safe flight characteristics with asymmetric flaps are necessary because the flaps may become unsynchronized.”

On January 20, 1970, HBC responded to the FAA’s request for flight testing. HBC contended that flight testing was unnecessary because aircrafts with flap systems similar to the Beech Duke’s system already had demonstrated safe flight characteristics. HBC requested that the FAA reconsider its position.

On February 11, 1970, the FAA again requested that HBC conduct flight testing or perform “an equally reliable analysis” in order to demonstrate safe flight characteristics for Beech Duke aircraft. Neither the FAA nor the regulations specified the precise manner in which the flight testing was to be conducted.³⁸

In response to the FAA’s repeated requests, HBC conducted flight testing of the Beech Duke in order to demonstrate compliance with Section 23.701. HBC’s proposed test plan called for creating flap asymmetry with the right flap extended and the left flap retracted. Prior to completing the test flight, however, the test plan was altered to complete testing with the left flap extended and the right flap retracted. HBC contended that although the flight test was modified, “there was no significant difference in the results that would require performing the test with one flap retracted as opposed to testing with the other flap retracted.”

Following flight testing, HBC provided the FAA with the flight test plan as well as the flight test report. Notably, the flight test report indicated that the actual flight test performed differed from that outlined in the proposed test plan. The report noted that “[w]ith one flap fully extended and

³⁸ In its February 11, 1970 letter, the FAA conceded that it had mistakenly believed that HBC had already conducted investigations of flight characteristics with asymmetric flaps. The record is unclear, however, as to why the FAA believed that such testing already had been performed.

the other fully retracted, the aircraft [wa]s still controllable and maneuverable during all normal flight regimes.” The report did indicate, however, that considerable more pilot technique was required. Nonetheless, the report concluded that the Beech Duke complied with Section 23.701.

As part of an FAA DOA audit, the FAA reviewed the flight test report provided by HBC and found it to be satisfactory. The FAA concluded that Beech Duke exhibited safe flight characteristics with an asymmetric flap condition, and thus complied with Section 23.701.

Notwithstanding the FAA’s approval of the flight test report, Plaintiffs contend that HBC “manipulated” the flight tests in order to conceal alleged “inadequacies” in the controllability of the Beech Duke in extreme asymmetric flap deployment scenarios. In support of this contention, Plaintiffs identify several procedures employed by HBC during flight testing that it claims were intended to achieve favorable results. Such procedures include: loading the aircraft to nearly maximum gross weight; deviating from the flap configuration specified in the flight test plan; and conducting the flight test in a steady state condition. By employing such procedures, Plaintiffs argue that HBC knowingly misrepresented that the Beech Duke was controllable in an asymmetric flap configuration.

The Court finds that Plaintiffs’ “misrepresentation claim” is nothing more than criticism of the testing procedures employed by HBC during its flight testing. The fact that Plaintiffs would have conducted additional or different testing is irrelevant for purposes of a misrepresentation claim. “[D]isagreements over what tests should have been performed or what caused crashes do not establish knowing misrepresentation.”³⁹

The Court finds no evidence of misrepresentation in HBC’s communications with the FAA. To the contrary, the record establishes that HBC engaged in an ongoing and open dialogue with the FAA prior to commencing flight testing. The extensive communication between the FAA and HBC detail requests from the FAA to conduct flight testing, and HBC’s responses. Plaintiffs’ experts have failed to identify any information that HBC misrepresented to the FAA during this series of correspondence.

Further, the Court finds no evidence that HBC knowingly misrepresented, concealed or withheld required information from the FAA concerning the flight testing. The record establishes that once testing commenced, HBC provided the FAA with a detailed plan outlining how the flight test would be conducted. Although the flight plan subsequently was altered, this change clearly was indicated in the flight report provided to the

³⁹ *Burton*, 254 P.3d at 787 n.9. See also *Rickert v. Mitsubishi Heavy Indus., Ltd.*, 923 F.Supp. 1453, 1458 (D. Wyo. 1996).

FAA – a report which the FAA deemed “satisfactory.” Therefore, Plaintiffs’ claim that HBC misrepresented information regarding how the actual flight test was conducted is without merit.

In accepting the results of HBC’s flight testing, the FAA implicitly acknowledged that it found the testing procedures employed appropriate. Had the FAA believed that the nature and extent of testing were insufficient, it could have required additional or different testing – but it did not. Even Plaintiffs’ experts concede that it was the “FAA’s call” as to whether the testing procedures employed by HBC were sufficient. The FAA reviewed the flight test report, which identified the testing procedures, and deemed it satisfactory.

HBC Demonstrated Compliance with 14 C.F.R § 21.3

Pursuant to Section 21.3, a TC holder – here, HBC – has a continuing obligation to report any failures, malfunctions, or defects in any product manufactured by it that it determines could result in specified safety risks.⁴⁰ Specifically, a TC holder is required to report “[a]ny structural or flight control system malfunction, defect, or failure which causes an interference with normal control of the aircraft or which derogates the flying qualities.”⁴¹

⁴⁰ 14 C.F.R. § 21.3.

⁴¹ 14 C.F.R. § 21.3(c).

A TC holder, however, is exempt from reporting failures, malfunctions, or defects that previously have been reported to the FAA.⁴²

The FAA established the Service Difficulty Program in an effort to provide assistance to owners, operators, manufacturers, and the FAA in identifying problems encountered during aircraft service.⁴³ Under this program, the FAA receives relevant information from a variety of sources, including FAA inspectors, owners, operators and certified repair stations.⁴⁴ The information collected is then published by the FAA in the form of SDRs.⁴⁵

The undisputed record in this case establishes that the FAA received over 100 reports, via the FAA's Service Difficulty Program, concerning problems with the Beech Duke's flap system. Additionally, as the Court previously has noted, HBC and the FAA engaged in extensive communications regarding the occurrence of an asymmetric flap condition in the Beech Duke. The regulations do not require HBC to re-report such a condition to the FAA each time it occurs. Moreover, "multiple reportings

⁴² 14 C.F.R. §§ 21.3(d)(1)(ii), (iii).

⁴³ *Aerospace, Inc. v. Slater*, 142 F.3d 572, 574 (3d Cir. 1998).

⁴⁴ *Id.*

⁴⁵ *Id.* at 575.

can cause serious problems for the FAA, which has a limited number of employees to handle them.”⁴⁶

The Court finds that because the FAA was aware of issues with the Beech Duke’s flap system, HBC was under no obligation to re-report each subsequent issue that arose with respect to the asymmetric flap condition. A manufacturer is not required to provide the FAA with information the manufacturer knows the FAA has received from another source.⁴⁷

New Parts Exception

Plaintiffs next seek respite under GARA’s new parts exception. Pursuant to Section 2(a)(2) of GARA, the 18-year repose period can restart when a new part or component is installed in a general aviation aircraft. In order to trigger Section 2(a)(2)’s rolling provision, Plaintiffs must: (1) identify the new part; (2) demonstrate that the part was placed on the Subject Aircraft within 18 years of the accident; (3) establish that the replacement part was defective and caused Plaintiffs’ injuries; and (4) establish that HBC manufactured the new part.⁴⁸

⁴⁶ *Burton v. Twin Commander Aircraft LLC*, 254 P.3d 778, 790 (Wash. 2011).

⁴⁷ See 14 C.F.R. §§ 21.3(d)(1)(ii).

⁴⁸ See *South Side Trust and Sav. Bank of Peoria v. Mitsubishi Heavy Indus., Ltd.*, 927 N.E.2d 179, 192-93 (Ill. App. Ct. 2010).

HBC, as the movant, has the burden to show that GARA’s statute of repose is applicable.⁴⁹ If HBC satisfies its burden, the burden shifts to Plaintiffs to show facts that operate to restart the limitation period.⁵⁰ In other words, this rolling provision applies if Plaintiffs “can show that a new item replaced an item either originally in the aircraft or added to the aircraft and the new item was also a cause of the claimed damages.”⁵¹

Plaintiffs’ Contentions

Plaintiffs argue that at some point between 1995 and 2001, HBC replaced the Subject Aircraft’s 90° drive for the right-hand flap (“90° drive”) in accordance with the manufacturers’ recommendations. This “new” part, Plaintiffs claim, failed during Hart’s flight, causing the plane to become uncontrollable and crash. Because this new part was allegedly placed in the Subject Aircraft within 18 years of the accident, Plaintiffs seek to hold HBC liable under GARA’s rolling provision.

⁴⁹ *Id.* at 193; *Willett v. Cessna Aircraft Co.*, 851 N.E.2d 626, 635 (Ill. App. Ct. 2006).

⁵⁰ *Agape Flights, Inc. v. Covington Aircraft Engines, Inc.*, 2011 WL 2560281, at *5 (E.D. Okla. 2011); *Willett*, 851 N.E.2d at 636.

⁵¹ *South Side Trust*, 927 N.E.2d at 193 (citing *Hiser v. Bell Helicopter Textron Inc.*, 111 Cal.App.4th 640, 650 (2003)).

Overhauled Part Insufficient to Trigger GARA

In order to invoke GARA's rolling provision, Plaintiffs must prove, *inter alia*, that a "new" part replaced an old part on the Subject Aircraft.⁵² Contrary to Plaintiffs' contention, an overhauled part does not constitute a "new" part.⁵³ As the court in *Butchkosky* observed:

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....⁵⁴

Here, Plaintiffs have failed to present *any* evidence demonstrating that the 90° drive on the Subject Aircraft's right flap's was ever replaced with a "new" part. Plaintiffs were unable to produce all of the Subject Aircraft's maintenance log books – which would have detailed any work performed on the flap system – for the relevant 18-year period. Plaintiffs only produced log books for the first 6 years of the relevant time period, none of which indicated that the 90° drive had been replaced. Plaintiffs did not produce

⁵² *Crouch v. Teledyne Continental Motors, Inc.*, 2011 WL 2517221, at *4 (S.D. Ala.); *Hinkle v. Cessna Aircraft Co.*, 2004 WL 2413768, at *9 (Mich. Ct. App.).

⁵³ *Hiser*, 111 Cal.App.4th at 651; *Butchkosky v. Enstrom Helicopter Corp.*, 855 F.Supp. 1251, 1255 (S.D. Fla. 1993); *Willett*, 851 N.E.2d at 635; *Hinkle*, 2004 WL 2413768, at *8; *Robinson v. Hartzell Propeller Inc.*, 326 F.Supp.2d 631, 663 (E.D. Pa. 2004).

⁵⁴ *Butchkosky*, 855 F.Supp. at 1255.

any other records, documents, or invoices from the relevant time period to demonstrate that the 90° drive had been replaced.

Plaintiffs, instead, rely solely on the testimony of Robert Pinto, the Subject Aircraft's principal maintenance provider, to prove that the 90° drive was replaced. At his deposition, Pinto testified that the flap systems had either been "overhauled or replaced." After this general statement, Pinto then identified the specific parts of the flap system that had been overhauled or replaced: the actuators, cables and flap motor. Notably, Pinto did not identify the 90° drives as parts that had been replaced.

Moreover, Pinto was unable to discern whether the 90° drive, which he claimed had been replaced, was an overhauled part or a new part. As the Court already has noted, the overhaul of an allegedly defective part does not trigger GARA's new parts exception. As such, the Court finds that Plaintiffs have failed to present sufficient evidence demonstrating that the 90° drive was replaced with a "new" part.

Only Manufacturer of Replacement Part Liable

Plaintiffs have failed to establish a *prima facie* case that HBC manufactured or sold the 90° drive that allegedly was replaced. It is well-settled that only the *actual* manufacturer or seller of the replacement part can

be held liable under GARA's new parts exception.⁵⁵ Therefore, the manufacturer of the aircraft cannot be held liable under this exception unless it also manufactured the relevant replacement part.

Plaintiffs have presented no evidence that HBC manufactured, installed, or sold the allegedly replaced 90° drive. It is undisputed that HBC had not dealt with the Subject Aircraft in 37 years. Rather, Plaintiffs seek to hold HBC liable by virtue of the fact that HBC, as the TC holder, manufactured the Subject Aircraft. According to Plaintiffs: "The FAA's definition of 'manufacturer' does not focus on who physically builds or supplies the particular item. Instead, the FAA focuses on the entity causing the product to be produced."

Plaintiffs' attempt to broaden the scope of the term "manufacturer" to include TC holders thwarts the legislative intent behind GARA to limit the tail of liability applicable to the manufacturers of general aviation aircraft.⁵⁶ As the *Sheesley* Court observed: "Congress meant what it said – the

⁵⁵ *Sheesley v. The Cessna Aircraft Co.*, 2006 WL 1084103, at *4 (D. S.D. 2006); *Burroughs v. Precision Airmotive Corp.*, 78 Cal.App.4th 681, 691 (2000); *Campbell v. Parker-Hannifin Corp.*, 69 Cal.App.4th 1534, 1545-46 (1999); *Pridgen v. Parker Hannifin Corp.*, 905 A.2d 422, 426-27 (Pa. 2006); *Stewart v. Precision Airmotive, LLC*, 7 A.3d 266, 275 (Pa. Super. Ct. 2010).

⁵⁶ *Sheesley*, 2006 WL 1084103, at *6. See also *Pridgen*, 905 A.2d at 427 ("Because we believe that the status of type certificate holder and/or designer fall under the umbrella of manufacturer conduct for purposes of GARA, it would wholly undermine the general period of repose if original manufacturers were excepted from claims relief for replacement parts under the rolling provision by virtue of that status alone.")

provision rolls the repose period for a claim against the manufacturer of a defective part.”⁵⁷ Because Plaintiffs have failed to establish a *prima facie* case that HBC manufactured or sold the 90° drive that was allegedly replaced, the Court finds GARA’s “new parts” exception inapplicable.

Warranty Exception

Plaintiffs’ Contentions

Plaintiffs seek to impose liability upon HBC under GARA’s “warranty exception.” Specifically, Plaintiffs contend that HBC’s delivery of the airworthiness certificate to the first purchaser constituted an express warranty, not preempted by GARA. This warranty, Plaintiffs claim, provided that the aircraft “ha[d] been inspected and found to conform to the type certificate ... to be in condition for safe operation....”

No Express Written Warranty Created

Pursuant to GARA Section (2)(b)(4), GARA’s statute of repose does not apply “to an action brought under a written warranty enforceable under law.” Contrary to Plaintiffs contention, however, the airworthiness certificate does not constitute a written warranty under GARA.⁵⁸ If the Court adopted Plaintiffs’ interpretation of the warranty exception, GARA’s

⁵⁷ 2006 WL 1084104, at *6.

⁵⁸ See *Bianco v. Cessna Aircraft Co.*, 2004 WL 3185847, at *8 (Ariz. Ct. App. 2004).

statute of repose would never apply. Such a result clearly was not contemplated by Congress in enacting GARA.

CONCLUSION

The application of the GARA statute of repose, and any exception to GARA's limitation bar, are matters of law.⁵⁹

The Court finds that HBC has met its initial burden of demonstrating that the GARA 18-year statute of repose is implicated. Viewing all facts and inferences in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have failed to establish a *prima facie* case that either GARA's knowing misrepresentation exception or new parts exception applies. The Court further rules that there is no express warranty created by the airworthiness certificate.

THEREFORE, Defendant Hawker Beechcraft Corporation's Motion for Summary Judgment is hereby **GRANTED**. The General Aviation Revitalization Act statute of repose bars this action.

⁵⁹ See *Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 553 (Iowa 2002).

Plaintiff's Motion for Judgment on the Pleadings is hereby **DENIED**
AS MOOT.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston