# TRIGGERING THE REPOSE PERIOD UNDER THE GENERAL AVIATION AND REVITALIZATION ACT ("GARA") OF 1994: WHEN DOES THE CLOCK BEGIN TO RUN FOR COMPONENT PART MANUFACTURERS?

By
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Congress' treatment of the "general aviation industry"[2] is in marked contrast to its usually *laissez-faire* attitude regarding tort reform. This is evidenced by Congress' enactment of the General Aviation Revitalization Act of 1994 ("GARA").[3] Under this Act, plaintiffs are barred from bringing suit eighteen (18) years after the first sale of an aircraft or replacement of a new component part. Congress was prompted to enact this bill after general aviation manufacturers' unions painted a bleak picture of the general aviation industry. For example, in 1994, a representative of the International Association of Machinists and Aerospace Workers ("IAM") informed Congress that the general aviation industry had been "decimated" by long tail product liability, which in turn gave foreign manufacturers drastic competitive advantage over U.S. manufactures, resulting in a staggering loss of U.S. jobs.[4]

Congress estimated that, in the 1980's, 100,000 jobs were lost in aviation manufacturing, services, and sales.[5] From 1978 to 1994, general aviation aircraft annual sales fell from around 18,000

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2 General Aviation aircraft are civilian aircraft carrying fewer than twenty (20) passengers and not used in scheduled passenger-carrying service. Approximately seventy percent of general aviation aircraft are small, single engine, piston-powered aircraft. *See* General Aviation Revitalization Act of 1994 (GARA), Pub. L. No. 103-298, 3(3), 108 Stat. 1552, 1553; Schwartz, Victor E., *The General Aviation Revitalization Act: How Rational Civil Justice Reform Revitalized an Industry*, 67 J. Air L. & Com. 1269, 1272 n. 6 (2002).

3 Pub.L. No. 103-298, 108 Stat. 1552.

4 *Prepared Statement of John Goglia, Representing the International Assoc. of Machinists and Aerospace Workers Before the House Committee on the Judiciary, Economic and Commercial Law Subcommittee*. 103rd Congress (1994).

5 H.R. Rep. No. 103-525, pt., at 2 (1994), reprinted in 1994 U.S.C.C.A.N. 1644.

to 928.[6] While sales plunged, product liability costs increased from $24 million in 1978 to more than $200 million in 1992.[7] Perhaps the most devastating impact on the industry was that the surge of product liability claims made it nearly impossible for general aviation manufacturers to secure liability insurance for design or product defects.[8]

In an attempt to revitalize the general aviation industry, Congress enacted GARA on August 17, 1994. GARA is a statute of repose that generally precludes claims against aircraft manufacturers when they are brought more than eighteen (18) years after the aircraft/component part was first placed into service.[9] Repose statutes are often compared to statutes of limitations given that both restrict the period of liability because of time, not culpability. However, these statutes are distinguishable in that "statutes of limitations prohibit lawsuits if a period of time has elapsed after an accident occurs."[10]

GARA provides, in relevant part, that

> "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

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6 U.S. Gen. Accounting Office, GAO-01-916, Status of Industry, Related Infrastructure, and Safety Issues 18 (2001).

7 James F. Rodriguez, *Tort Reform & GARA: Is Repose Incompatible with Safety?*, 579 (Summer 2005) (discussing the rapid decline of the general aviation industry due to product liability suits).

8 Lloyds of London was quoted as saying "We are quite prepared to insure the risks of aviation, but not the risks of the American legal system." *Id.* at 580.

9 GARA, *supra* note 2, § 2(d).

10 *Robinson v. Hartzell Propeller Inc.*, 326 F. Supp. 2d 631, 646 (E.D.P.A, 2004).

aircraft, in its capacity as a manufacturer if the accident occurred—

(1) after the applicable limitation period [18 years] beginning on—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

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

(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."[11]

GARA defines "general aviation aircraft" as "any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration ("FAA"), which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger-carrying operations as defined under regulations in effect under the Federal Aviation Act of 1958."[12]

Since GARA is a federal statute, it has supremacy over state law.[13] Thus, GARA precludes a plaintiff from recovering under state law for the following claims: (1) strict liability for

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[11] GARA, *supra* note 2.

[12] *Id.*

[13] Supremacy Clause-U.S. Constitution

defective design, manufacture, and marketing; (2) negligent design, testing, manufacture, and marketing; and (3) negligent failure to warn.[14] However, GARA's statutory protection is not available when (1) a manufacturer knowingly misrepresented, concealed or withheld from The FAA required information that is material and relevant to the performance of the maintenance or operation of an aircraft, component, system, subassembly, or other part that is causally related to the harm which the claimant allegedly suffered, (2) a person is a passenger only for purposes of receiving treatment for a medical procedure or other emergency (3) a person is not a passenger on an aircraft at the time of his/her injury or death, and (4) the action, brought under written warranty, is enforceable but for the operation of the Act.[15]

## COMMENCEMENT OF GARA'S PERIOD OF REPOSE

The beginning of GARA's repose period depends on who receives delivery of the aircraft. For example, when a manufacturer delivers the aircraft to "its first purchaser or lessee," the eighteen-year repose period is triggered on the date of delivery to these entities. Whereas, when the aircraft is delivered to "a person in the business of selling aircraft," the repose period begins when that person receives delivery of the aircraft from the manufacturer. Additionally, the repose period begins on the "date of completion of the replacement or addition" when any new component, system, subassembly, or other part replaces another component, system, subassembly, or other part that was originally in, or was added to, the aircraft, and which is alleged to have caused such death, injury, or damage.

In addition to seeking protection under GARA, a defendant must consider whether its product was the proximate cause of the accident in question. Thus, even if a defendant cannot

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[14] *Burroughs v. Precision Airmotive Corp.*, 78 Cal. App. 4th 681 (Cal. Ct. App. 2000).

[15] GARA, *supra* note 2.

successfully take advantage of a GARA defense, if the product in question was not the proximate cause of the accident, the plaintiff will fail to establish a *prima facie* case of liability. Thus, in addition to, and perhaps before, considering whether GARA provides a defense against plaintiff's claims, defendants should consider whether there is sufficient evidence for the plaintiff to establish a case of liability.

## Interpretation Of Terms Under GARA

Many cases that have been decided under GARA usually involve questions of interpretation of the following GARA terms, which are not defined by the Act: *"manufacturer", "system"* and *"replacement"*. Also, GARA does not address the situation in which an aircraft originally designed for military use is later transferred to civilian use.

### A) Aircraft Originally Designed For Military Use

As previously stated, "General Aviation Aircraft" are defined by GARA as aircraft that have been issued an airworthiness certificate by the Federal Aviation Administration ("FAA"), has a maximum capacity of fewer than twenty (20) passengers and is not, at the time of the accident, engaged in scheduled passenger-carrying operations.[16]

Despite the apparent certainty of this term, there has been some contention among litigants as to when the definition applies. For example, some aircraft originally may have been built for military purposes, but are later transferred to civilian use. In that case, plaintiffs would argue that GARA's statute of repose does not begin to run until the aircraft is officially recognized by the FAA as a "general aviation aircraft." Defendants argue that the moment the aircraft is first purchased and delivered is when GARA's clock begins to run. Courts have been persuaded by

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[16] *Id.*, § (2)(c).

defendants' argument and have consistently held that, "the limitations period is triggered by the initial delivery of the aircraft, even if the aircraft cannot be considered a 'general aviation aircraft' at that time,"[17] reasoning that this accurately reflects the intention of Congress when it enacted GARA.

**B) Parties With Standing As *Manufacturers* Under GARA**

A *"manufacturer"* within the meaning of GARA may include (1) the original component part manufacturer, (2) replacement component part manufacturers and (3) manufacturers holding a Parts Manufacturer Approval ("PMA").[18] GARA's rolling provision only[19] applies to the manufacturer of the new replacement part or newly added part and not to the original manufacturer. However, there are situations when it is unclear exactly who is considered the manufacturer of the part in question.

As previously stated, GARA precludes lawsuits brought against a new component part manufacturer "*in its capacity as manufacturer* arising out of accidents involving any general aviation aircraft which is more than eighteen years old." In attempting to circumvent the application of GARA, plaintiff attorneys will argue that a manufacturer is not entitled to GARA's protection on the grounds that (1) it was not acting "within its *capacity as a manufacturer*," as required by GARA and (2) the nature and work of the manufacturer triggered GARA rolling provisions which restarts GARA's clock.

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17 *Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1112 (9th Cir. 2002); *Croman v. General Electric, 2005 U.S. Dist. LEXIS 39408*, (E.D.C.A. 2005).

18 Manufacturers that hold a PMA are entitled independently to produce an original manufacturer's product line with approval from the Federal Aviation Administration.

19 GARA's eighteen-year period of repose is reinitiated on the date of completion of the replacement or addition of new component, system, etc. to the aircraft. *See* GARA, *supra* note 2.

In *Mason v. Schweizer Aircraft Corp.*,[20] the court rejected the plaintiff's argument that the manufacturer was acting in the capacity of a maintenance provider and not a manufacturer when it issued a maintenance manual that was allegedly defective. Instead, the court held that (1) the defendant was acting in its capacity as a manufacturer when it issued the manual and (2) the rolling provision of the statute of repose is not triggered upon the issuance or sale of a manual unless the manual contains a revision that is causally related to the event. Here, the manual was not the proximate cause of the accident given that the plaintiff's claim rested on "a failure to warn [theory]" and not the premise that "the revision or change to the manual" was the cause of the accident.[21]

In *Caldwell v. Enstrom Aviation Corp.*,[22] the court dealt with the latter instance in which a revision to the flight manual was the proximate cause of the accident. The court concluded that the accident was caused solely by the defective manual, which was changed within the eighteen (18) year period, making it "new." The defendant did not fall within GARA's protection. Thus, in order to challenge plaintiff's claim that a revision or change to a maintenance, overhaul or flight manual results in triggering of GARA's rolling provision, a defendant must show that the revision or change was not causally related to the accident.

Another scenario that often arises is when an entity holding a Parts Manufacturing Approval ("PMA") manufactures a product, along with the original manufacturer. Courts have held that when these entities manufacture the product in lieu of the original manufacturer, instead of alongside it, they "stand in the shoes of the manufacturer." For example, in *Burroughs*,[23] the court held that when a holder of a PMA becomes "the entity responsible for issuing manuals and bulletins and fulfilling the manufacturer's

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20 653 N.W. 2d 543 (Iowa 2002).

21 *Id.*

22 230 F. 3d 1155 (9th Cir. 2000).

23 78 Cal. App. 4th at 693.

obligations for continued airworthiness," it becomes the manufacturer for all intents and purposes. Thus, when the original manufacturer would be protected under GARA, the PMA manufacturer should also be.

Although this case involved a situation where the PMA manufacturer took over the original manufacturer's product line, since the PMA manufactured product should conform to the original manufacturer's design, when the PMA manufacturer produces the product alongside the original manufacturer, it should be afforded the same protection under GARA as the original manufacturer.

**(c) *Systems* As Defined By GARA**

In *Hiser v. Bell Helicopter Textron, Inc.*,[24] a helicopter assisting in a fire-fighting mission crashed, allegedly due to the failure of portions of its fuel transfer system. There was also an allegation that a contributing cause of the crash was the failure of a warning system to activate at the proper time to warn the pilot of a low fuel condition.

In *Hiser*, the fuel transfer system that allegedly failed had not been replaced within eighteen years of the accident. The fuel flow switches within the aircraft's low-fuel warning system—which allegedly were defectively designed and did not detect the failure—had been replaced within that period. The court found that the installation of new parts—even in accordance with a partial redesign of the system—does not constitute a replacement of the entire system.[25] Rather, for GARA purposes it is a replacement only of that particular component.[26]

Nevertheless, the court found GARA did not bar the claim because, "[w]hile the fuel transfer system may have been

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[24] 111 Cal. App. 4th 640 (2003).
[25] *Id.* at 649-51
[26] *Id.* at 651

largely GARA protected, the component that was supposed to warn of failure was not itself GARA protected."[27]

And finally, in the unpublished decision of *Hinkle v. Cessna Aircraft Company*,[28] the Michigan Court of Appeals upheld the summary judgment dismissal of the fuel pump and engine manufacturers. *Hinkle* involved a 1995 accident in which the aircraft's right engine driven fuel pump failed. The fuel pump was manufactured in 1973, more than eighteen years prior to the accident. The plaintiff argued that since the fuel pump is an integral part of the engine, a failure of the fuel pump is tantamount to failure of the engine itself and the court should hold the engine manufacturer liable for the failure of the component part. The plaintiff contended that the engine was not more than eighteen years old and, alternatively, it had been rebuilt and overhauled in 1994. The court rejected this argument since it would effectively permit the plaintiff to circumvent GARA's statute of repose by allowing suit against any manufacturer of a larger part that was replaced or added within GARA's statute of repose, in which a sub-part that is the actual cause of the accident is incorporated and where that part was over eighteen years of age. The court emphasized that the proper focus is on the component that actually causes the crash, not the larger part that encompasses many smaller components.

**(D) *Replacement* Within The Meaning Of GARA**

Also in *Hinkle*, the court rejected plaintiff's argument that GARA's statute of repose should not apply to the engine or the fuel pump manufacturers because the fuel pump was overhauled less than two years prior to the crash, thus "rolling" the GARA statute. The court stated that the plain language of the statute dictates that GARA's eighteen-year period of repose is only rolled if a "new" part replaced an old part or is added to the aircraft and if the

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27 *Id.* at 654

28 No. 247099, 2004 WL 2413768 (Mich. Ct. App. Oct. 28, 2004).

"new" part is alleged to have caused the accident. The mere "overhaul" of a part does not render it "new" for purposes of GARA. GARA expressly states that its eighteen-year repose period will begin anew when a new component "replaces" an old one. "Replacement" requires two (2) acts, (1) removal of the old and (2) substitution of the new.[29]

The court in *Caldwell*[30] recognized that the legislative intent behind the statute was to "provide for a 'rolling' statute of repose [so] victims and their families will have recourse *against new component part manufacturers*." The component part rule is therefore utilized by courts to reflect the intent of the legislature: a balance between "providing some certainty to manufacturers... while preserving victims' rights to bring suit for compensation in certain particularly compelling circumstances."[31]

One unresolved issue under GARA is whether GARA's repose period runs from the time the component part manufacturer sells its product to an airframe manufacturer, supplier or other manufacturer. GARA specifically states that the rolling provision starts, with regard to replacement of a new component part, on the date of "completion or addition." The ambiguous term here is "completion." It is open for debate whether "completion" occurs when the manufacturer finishes making the part or when it is installed on an aircraft. Plaintiff attorneys will argue that Congress intended for completion to occur, not at the date of sale and delivery of the component part, but rather on the date that the part takes its place in an airframe. The plaintiff's argument will likely be bolstered by the fact that the statute specifically indicates that the date of sale is when the statute begins for airframe manufacturers. The premise of its argument rests on the assumption that if Congress intended for the latter

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29 *Hiser*, 111 Cal. App. 4th 640 (2003)

30 230 F.3d at 1157

31 *Burroughs*, 78 Cal. App. 4th 681 (2000) (quoting GARA, H.R. No. 103-525(II), 103d Cong., 2d Sess.).

provision to have the same meaning, it would have expressly stated it as it did with respect to airframe manufacturers.

However, defendants also have an argument for why the date of sale is the start of GARA's repose period. For example, in the interest of justice the repose period should begin at the time of sale because the part is out of the manufacturer's control. Lack of control has two major effects on the manufacturer. First, the manufacturer has no way of knowing what happens to its part after the date of sale and second, it has no control over how long the purchaser keeps the part on the shelf.

Finally, very often component parts are removed from the original aircraft and later installed in another aircraft, and still later may be installed in yet another aircraft. Does GARA's repose period restart when the component is then installed in another (other than the original) aircraft? "Once a part is originally installed on an aircraft, GARA's eighteen year statute of repose period begins to run, even when the part is removed and installed as new in another aircraft."[32] In this case, the component is not "new" as contemplated by GARA, but rather is simply a replacement part. The *Glover* Court even went as far as to hold that "for GARA to apply, a defendant manufacturer who performs maintenance on a part subsequent to manufacture must prove it did not replace any part with a new part."[33] This scenario often arises given that many manufacturers provide overhaul, rebuilding, and maintenance services. Their work in those capacities may be susceptible to suit after the expiration of the period of repose if they do not keep good records pertaining to when and to what extent they overhauled/repaired one of their parts. Good recordkeeping will enable manufacturers to assert a GARA defense early on in litigation, thereby reducing litigation costs.

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[32] *Estate of Glover v. American Resource Corp.*, No. 160673, slip op. at 1 (Cal. Super. Ct. Sept. 13, 1996).

[33] *Id.*

"Having" a GARA defense and being able to assert it successfully in court are two very different matters. For example, manufacturers often note that they have a GARA defense because their product was sold or replaced more that eighteen (18) years before the date of the accident in question. However, these same manufacturers are prevented from successfully asserting this defense in court because they do not have a sufficient evidentiary record of proof. One way to ensure protection under GARA is to keep accurate and updated records of when a product was sold, installed, removed, overhauled, repaired and reinstalled. Records should also indicate the entity that performed the overhaul, repair and maintenance and what work was performed. These relatively simple measures will enable manufacturers not only to "have" a GARA defense, but also to be able to assert it successfully in court.