



Attacking & Defending: GARA

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Attacking & Defending GARA

- Overview of GARA
- The Attacks & Defenses

GARA Overview

- 18 year Statute of Repose
 - Benefits Manufacturer
 - Applies to General Aviation Aircraft
 - Clock Starts When Manufacturer Delivers
 - Purchaser, Lessor or Someone in Business

GARA Overview

- Rolling Provisions
- Exceptions
 - Knowing Misrepresentation
 - Air Ambulances
 - Person Not Aboard the Aircraft
 - Written Warranties

Attacks

- Not Manufacturers
 - Label Does Not Mean Manufacturer (*Campbell v. Parker-Hannifin*)
 - Successor Manufacturers Are Protected (*Burroughs v. Precision Automotive*)
 - Asset Purchase May Not Enjoy GARA Protection (*Michaud v. Fairchild Aircraft*)
 - Foreign Manufacturers Protected (*Lahaye v. Galvin Flying Serv.*)

Attacks

- Not Acting in Role As Manufacturer
 - Cessna Service Center As Mechanic
 - Cessna Pilot
 - Issuing Service Bulletins is Acting as a Manufacturer (*Burroughs v. Precision Airmotive*)

Attacks

- Not a General Aviation Plane
 - Fewer than 20 passenger seats and
 - Not engaged in scheduled pass.-carrying operation
 - Valid Airworthiness Certificate
 - Public Aircraft can be General Aviation Aircraft (*Schwartz v. Hawkins & Powers Aviation*)

Attacks

- GARA Should Not Apply to Foreign Crashes
 - Presumption Against Extraterritorial Application of Fed Statutes
 - Goose/Gander
 - Key is Where Did Conduct At Issue Occur
 - No Express Preemption of International Law

 - *Alter v. Bell* held GARA applies
 - *Blazevska v. Raytheon* pending in 9th Cir.

Attacks

- Manuals as New Components
 - Manual is Product that Rolls the Clock (*Caldwell yes; Hinkel yes; Robinson yes; Burroughs yes; Alexander no; Alter no*)
 - Manuals Revised (Altered or Deleted) within 18 years
 - Manual Applies to Your Airplane (*Hinkle v. Cessna*)
 - The Defect Must be with Manual Itself Instead of Failure to Warn of Other Defect
 - The Defect In Manual Caused Crash (*Caldwell; Alexander; Carolina Ind.; Robinson*)

Attacks

- Defect in Newly Added Component
 - Overhaul of Propeller Does Not Roll Clock (*Robinson v. Hartzell Propeller*)
 - New Part on One Part of System May Not Roll Clock for Other Parts of System. (*Lahaye v. Galvin Flying Services*)(*Sheesley v. Cessna*)
- SO
- Need a new or replaced part to Roll
 - Defect needs to be with that new or replaced part

Attacks

- Knowing Exception
 - Knowing Misrepresentation, Concealment, or Withholding (*Campbell v. Parker-Hannifin*)
 - Required Information to FAA
 - Required by statute or regulation
 - In response to direct inquiry by FAA
 - Necessary to correct previously provided information
 - Material & Relevant
 - Cause

Attacks

- Knowing Exception
 - Expert Affidavit that Cessna Knew it Had to Misrepresent Horsepower to Meet Single Engine Climb Requirements (*Hinkle v. Cessna*)
 - Affidavits of former employees that actively conceal information on the MU-2 (*Rickman v. Mitsubishi*)

Defensive Actions

- Who Has the Burden of Proof? (*Willett v. Cessna*)
- Interim Appeal of GARA MSJ Denials (*Pridgen-yes, Robinson-no & Kennedy-yes*)
- Motion In Limine (*Sheesley*)
- Preemption
- Removal Alleging Federal Question (*Wicksell*)

