

SCOMM

101A:27

Alaska State Legislature



Official Business

House Majority Leader

State Capitol
Juneau, AK 99801-1182
(907) 465-3718

*Not
Sent*

Representative Gene Therriault
Alaska State Legislature
March 13, 1997

Re: HB 58: Effect on general aircraft manufacturers

Dear Gene:

Attached is a copy of testimony given by Edward M. Bolen, president of the General Aviation Manufacturer's Association a week ago before a United States Senate subcommittee.

This timely and informative testimony should be provided to all members of the Finance Committee, and made a part of the record.

The point of the testimony is that product liability laws came within a hair of totally destroying a truly American industry which is now trying to make a comeback.

What does not appear in the testimony is that HB 58's eight year statute of repose would control over the 18 year federal statute of repose. This is significant, since it may have some direct economic impact in Alaska. A few years ago, when Paul Fuhs was Commissioner of Commerce and Economic Development, a single engine manufacturer wanted to build a plant in Palmer, but did not do so because of the state of our liability laws.

Sincerely yours,

Brian Porter

*Jim,
-Will have to keep
it fairly uncomplic-
ated for Lemm-
This issue goes
between Prod. Liab.
which we exclude
and other items
Let's not mix. B.*

**Statement of Edward M. Bolen
President
General Aviation Manufacturers Association**

**before the Subcommittee on Consumer Affairs, Foreign Commerce and Tourism
Committee on Commerce, Science and Transportation
United States Senate**

**Hearing on the Effectiveness of the General Aviation Revitalization Act of 1994
March 6, 1997**

On August 17, 1994, President Clinton signed into law legislation that Senator Nancy Kassebaum, Congressman Dan Glickman, and many others had been trying to pass for nearly eight years. The legislation was a tiny, little three page bill with a very ambitious name—The General Aviation Revitalization Act (GARA).

As its title suggests, the intended purpose of GARA was to breathe life into an important, truly American industry which experienced a 95 percent decline in production and a loss of over 100,000 jobs in the past decade. I am grateful for the opportunity to share with you today some of the history of the bill, recent court decisions related to it, and to describe the exciting things that have happened in general aviation since its passage.

HISTORY

Since the time of the Wright brothers, the United States has dominated nearly every aspect of aviation—including general aviation manufacturing. Industry pioneers like Walter and Olive Ann Beech, Clyde Cessna, William Piper and Bill Lear founded and built companies whose names have become synonymous with aviation excellence.

Ironically, the fact that many of these companies produced quality products for several decades was a contributing factor to the liability crisis the general aviation industry experienced. Until GARA, these manufacturers and their suppliers were routinely sued in accidents involving planes that were built in the 1930's, 40's, 50's and 60's, and had numerous owners. In some cases, an aircraft supplier was sued in connection with an accident when that company's part was not even on the aircraft involved.

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Hearing on the Effectiveness of the General Aviation Revitalization Act

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Although manufacturers would usually win these cases, the costs were tremendous.

In fact, Beech Aircraft Company, now Raytheon Aircraft Company, determined that it was spending an average of \$500,000 on the cases that it won. Talk about a Pyrrhic victory. Can you imagine? Five hundred thousand dollars to prove that a 50 year old plane was not negligently manufactured.

As absurd as it sounds, this was happening regularly. General aviation manufacturers were being held responsible for every plane they had ever built. In that environment, it was possible to sue a manufacturer for some of the same types of aircraft that proudly hang in the National Air and Space Museum.

LIABILITY TAIL

The consequence of manufacturers being held indefinitely responsible for every plane they ever built was a "liability tail" that was becoming more and more expensive to insure. A study by the Wyatt Company showed that paid claims soared from \$24 million in 1979 to \$210 million in 1985. And manufacturers found it difficult to build these liability costs into the price of new airplanes.

In 1986, Cessna, the world's largest producer of piston powered aircraft, closed its piston-engine lines because of the high liability costs. At the time, Cessna chairman Russ Meyer promised that if Congress ever addressed the product liability issue, Cessna would re-enter the market.

By the mid 1980's, even the insurers began to retreat from the United States market. "We are quite prepared to insure the risks of aviation," said a Lloyd's of London underwriter. "but not the risks of the American legal system."

THE PREMISE

The idea behind the industry's response to indefinite liability—the statute of repose—is quite simple: at some point in time, a product's very durability proves its quality. Products which are so well built that they can last a significant period of time after they have left the hands of the manufacturer are not negligently designed or manufactured.

Ultimately, a product may be negligently maintained, or negligently operated, or improperly repaired, or negligently modified. But these are not faults for which the original manufacturer should be held responsible. And they should not have to pay huge costs to prove that they are not responsible.

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Instead, if a product can meet the arduous test of time, the original manufacturer should be relieved of liability.

LEGISLATIVE HISTORY

Beginning in 1986, and in each term of Congress thereafter, bills were introduced in both the House of Representatives and in the Senate which were designed to address the industry's product liability problems. Although the earlier bills were much broader than GARA in that they addressed issues such as joint and several liability and federal court jurisdiction, they also included a statute of repose provision.

Unfortunately, none of the earlier bills were able to overcome the opposition of certain members of Congress and the plaintiffs bar. Although the bills often had a huge number of cosponsors, until GARA, no general aviation product liability bill ever received a vote on the floor of Congress.

1993 was the turning point in general aviation's product liability battle. In that year, President Clinton appointed a national commission to review the health of the aviation industry which unanimously recommended that Congress enact a 15 year statute of repose for general aviation aircraft and their component parts. One member of the President's Commission was John Peterpaul of the International Association of Machinists. His members had lost thousands of jobs. His pledge to support the recommendation and his active campaigning for it helped change the dynamics of the product liability debate. As far as I know, this was the first time that labor had ever supported product liability legislation.

As a direct result of the commission's recommendation, Senator Kassebaum and Congressmen Glickman and Hansen introduced the General Aviation Revitalization Act of 1993.

THE BILL

As originally introduced, the legislation was a 15 year statute of repose with no exceptions. However, the bill's sponsors found it necessary to make concessions to certain members of Congress in order to get the bill out of the various committees of jurisdiction and to a vote on the floor.

By the time of its enactment, GARA became an 18 year statute of repose with four exceptions:

1. If the claimant pleads with specificity the facts necessary to prove, and proves that the manufacturers knowingly misrepresented to the FAA, or concealed or withheld from the

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FAA required information that is causally related to the harm which the claimant allegedly suffered;

NOTE: the requirement for "specificity" in this exception was intentional. The bill's sponsors wanted this to be a very narrow exception which placed a strong burden for moving forward on the plaintiff. Consequently, they chose the word "specificity" rather than "articularity" which is more commonly used in federal fraud cases.

2. If the person was a passenger for purposes of receiving medical treatment;
3. If the person injured was on the ground; and
4. If the action was brought under a written warranty.

RECENT DECISIONS

To the best of my knowledge, there have been 13 cases related to GARA so far. In general, the courts have interpreted the statute the way Congress intended. They have found that GARA is constitutional, that the "pleading with specificity" requirement should be narrowly interpreted, that the statute will apply to foreign accidents when an action is filed in the U.S., and that courts will not treat manuals as replacement parts and thus eviscerate the bill.

However, in two cases the courts have completely ignored the clear language of the bill and allowed cases to go forward. These cases are a threat to the integrity of the bill.

GARA'S IMPACT ON GENERAL AVIATION

Since GARA's passage, general aviation has staged a remarkable comeback. Production lines have been reopened and new products are coming onto the market. Over the next three years, more new models of aircraft will be introduced than in the decade that preceded it. Employment at the seven airframe manufacturers GAMA represents has increased from 23,879 in 1994 to 33,913 today.

Cessna Aircraft Company has opened a new production facility in Independence, Kansas—marking its return to the piston-engine aircraft market it left in 1986 because of high product liability costs. Cessna's re-entry is directly attributed to GARA.

The new Cessna plant is expected to produce 1,000 planes this year and 2,000 planes next year. Since passage of GARA Cessna alone has added 2497 persons to its workforce.

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Hearing on the Effectiveness of the General Aviation Revitalization Act

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Of course Cessna is not the only GARA success story—far from it. Piper Aircraft, which languished for years in bankruptcy, has emerged as The New Piper Aircraft, Inc. The company's value tripled and employment has gone from 405 in 1994 to over 650 today. According to company President and CEO Chuck Suma, "We are The New Piper Aircraft, Inc. because of GARA and its limiting effect on the enormous product liability tail."

In 1988, Unison Industries scrapped a year's worth of research on a totally new electronic ignition system because of the potential liability risk. Today, Unison's new electronic ignition is on the market, and other component manufacturers have also decided to vigorously return to the general aviation market.

In the past few years, the general aviation industry has invested heavily in research and development in the turbine-engine market. Now, we are beginning to see new R&D at the lower end. An industry/government partnership called AGATE, Advanced General Aviation Transport Experiment, has the participation of 70 companies and universities. It is working on such technologies as icing detection and protection, cockpit integration, and new general aviation propulsion technologies for both piston and turbine aircraft. Over the next five years, NASA's investment in general aviation technology may reach \$400 million. Without GARA, general aviation companies would not be in the position to participate in these programs, nor to reap the benefits.

Most importantly, aviation consumers are feeling better. Recent membership surveys by the Aircraft Owners and Pilots Association show that, since the passage of GARA, optimism by the pilot community has taken a dramatic shift for the better. GAMA, AOPA, and all segments of the general aviation community are launching a new program to encourage more new pilots. This program is based on extensive market research that identified 1.2 million Americans who have an interest in becoming pilots.

CONCLUSION

In judging the results of GARA, I believe former FAA Administrator David Hinson said it best when he said, "There is widespread agreement that the General Aviation Revitalization Act is having its intended effect."

The proponents of GARA strongly believed that this simple legislation would create jobs and bring new products to the market. They were correct.

And, if the courts continue to interpret GARA as Congress intended, I believe the future looks bright for general aviation both as an important transportation tool and for the thousands of well-paying, high-skill manufacturing jobs that depend on it.

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