

## **Symposium on the General Aviation Revitalization Act**

### **A “Tail” of Liability Reform: General Aviation Revitalization Act of 1994 & The General Aviation Industry in the United States**

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I. INTRODUCTION

After an eight year legislative battle,<sup>1</sup> a modest effort at reforming the U. S. aviation products liability system was signed into law by President Clinton on August 17, 1994.<sup>2</sup> The General Aviation Revitalization Act of 1994<sup>3</sup> (GARA) amends the Federal Aviation Act of 1958,<sup>4</sup> purportedly in order to offer general aviation “some measure of relief from the onslaught of product liability litigation.”<sup>5</sup> In the words of President Clinton, GARA

accommodates the need to revitalize our general aviation industry, while preserving the legal rights of passengers and pilots. . . . This limited measure is intended to give manufacturers of general aviation aircraft and related component parts some protection from lawsuits alleging defective design or manufacture. . . . This act will allow manufacturers to supply new basic aircraft for flight training, business use, and recreational flying. . . . This is a job-creating and job-restoring measure that will bring good jobs and economic growth back to this industry.<sup>6</sup>

This paper addresses the implications of GARA for the general aviation manufacturing industry in the United States. In particular it examines GARA’s scope and purpose in light of the current state of the

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1. This legislative battle began with the General Aviation Liability Standards Act of 1986. It continued with the General Aviation Standards Act of 1987, the General Aviation Accident Liability Standards Act of 1989 and 1991, the Product Liability Fairness Act of 1992 and the General Aviation Revitalization Act of 1993.

2. General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 1994 U.S.C.C.A.N. (108 Stat.) 1552.

3. *Id.*

4. Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731 (codified at 49 U.S.C. § 1301 et seq.) [hereinafter *FA Act*].

5. Gary W. Allen, *The General Aviation Revitalization Act of 1994: Taming the Wild Blue?*, LAWYER-PILOTS BAR ASSOCIATION JOURNAL, Summer 1994, at 6.

6. Statement by President William J. Clinton upon signing S.1458, 30 WEEKLY COMP. PRES. DOC. 1678 (Aug. 17, 1994).

general aviation industry. It also analyzes the possible effects of GARA's interaction with Federal preemption<sup>7</sup> of State products liability laws in aviation cases.<sup>8</sup> The article discusses general aviation's prospects under GARA's attempt at reform. The article, in conclusion, looks at the destructive intersection of tort liability, industrial competitiveness and manufacturer viability with preservation of litigants' access to the courts for product liability suits.

## II. GENERAL AVIATION INDUSTRY

### A. INDUSTRY AND ITS ACTORS

General aviation encompasses a broad range of activities which do not fall under the rubric of the Federal Aviation Administration's Federal Aviation Regulation Parts 121 and 135 for scheduled and non-scheduled airline operations. As such, general aviation includes the construction, maintenance, and flight operations of corporate jets, 1944 Boeing Stearmans, home-built sailplanes, and helicopters (to name a few). The general aviation industry is composed of actors as varied as the "Big Three" airframe manufacturers,<sup>9</sup> small airframe,<sup>10</sup> kit-plane,<sup>11</sup> and component parts manufacturers,<sup>12</sup> Fixed Base Operators (FBOs),<sup>13</sup> private flight instructors, mechanics, and pilots. Though not generally recognized as a vital sector of the American economy and transportation infrastructure, the general aviation industry is a "prestige industry" whose benefits are not insubstantial. General aviation's fortunes are viewed as one indicator of the vibrancy of American industry in the global marketplace.<sup>14</sup> As with any "flagship" industry, a sharp decline in its fortunes raises questions of why and what can be done. During the 1980's and 90's, general aviation dramatically illustrated how developments in tort law in-

7. 49 U.S.C. § 1506, (codified as amended at 49 U.S.C. § 40120(c)).

8. Marie Ellen Haynes, *Federal Preemption of State Products Liability Laws in Aviation Products Liability Cases Involving Claims of Defective Design*, LAWYER-PILOTS BAR ASSOCIATION JOURNAL, Summer 1994, at 33.

9. Cessna Aircraft Co., Piper Aircraft Corp., and Beech Aircraft Corp.

10. Mooney and American General.

11. Stoddard-Hamilton and Rutan.

12. Unison Industries, Teledyne-Ryan, Continental, and Hartzel.

13. Stevens Aviation, *et al.*

14. General Aviation contributes more than \$38 billion to the U.S. economy and provides over 530,000 jobs. It supports more than 212,000 general aviation aircraft and 703,000 pilots. Furthermore, the country depends on general aviation ". . . to obtain medical treatment for the sick and injured, to protect our crops, to haul freight and Fortune 500 presidents, [and to train virtually all commercial airline pilots] . . . without it, Alaska would shut down . . . . General Aviation is an essential part of this [nation's] vital infrastructure. It's a national resource, a national asset . . . ." Symposium, *Second Annual FAA General Aviation Forecast Conference Proceedings*, March 12-13, 1992, FAA-APO 92-3 at 15. (Keynote Address) [hereinafter Symposium].

terfaced with economic development — to play a large role in forcing an industry to its knees.

## B. INDUSTRY GROWTH

General aviation and the industries it spawned find their roots in the two World Wars. Following World War I, the U.S. government disposed of thousands of surplus “Jenny’s” at bargain basement prices.<sup>15</sup> A vibrant general aviation community was born. During the 1920’s and 30’s, thousands of locally-built, single-engine planes flew in “barnstorming” acts around the country and spread a vision of the future of aviation from the big city to the smallest town. At the same time, the federal government entered the field of prescribing legal rules, regulations governing the airways and aircraft. In this pre-World War II period, the government recognized the need for support in the development of an aviation infrastructure.

The technology of aerial warfare drove much of the American effort to defeat the Axis Powers in World War II. From this effort blossomed the principal pieces of 1960’s and 70’s general aviation. A plethora of trained pilots, aircraft mechanics, aero-engineers commanded a rapidly maturing airspace and airport infrastructure. A general “belief” grew in the present and future benefits of air transportation and recreation.<sup>16</sup>

The post-war 1950’s were a time of innovation and entrepreneurial spirit in the field of general aviation aircraft manufacturing. Alongside the world-class commercial products of Boeing, Douglas, and Lockheed,<sup>17</sup> a multitude of single- and multi-engine light piston aircraft were emerging from backyard garages, small-town factories, and major manufacturers’ plants. The skies were filled with surplus World War II training aircraft, as well as new designs from manufacturers like Cessna, Piper, Beech, Stinson, and Luscombe. Small town airports flourished and surplus military airfields were transferred to civilian use. A burgeoning support industry drew on the talents of ex-army air corps personnel. These human resources propelled further growth in maintenance shops, fuel services, sales and support, and training of the next generation of pilots.

The 1960’s and 70’s saw exponential growth in the number of pilots flying and the number of aircraft produced. This was due in large part to the endeavors of the “Big Three” of Cessna, Piper, and Beech.<sup>18</sup> Consolidation of the general aviation manufacturing industry had taken place in

15. PAUL DEMPSEY ET AL., AVIATION LAW AND REGULATION § 7.01, at 7-2 (Abr.ed. 1992).

16. In addressing the future of general aviation in 1992, acting Administrator of FAA, Mr. Barry Harris Lambert, stated “[s]olo flight has been a part of America’s heritage for almost nine decades. I can’t imagine what this country would be without it.” *Supra* note 14, at 15.

17. Boeing 377 and 707, Douglas DC-7 and DC-8, and Lockheed Constellation.

18. *General Aviation Revitalization Act of 1993: Hearing on H.R. 3087 Before the Subcomm.*

the late 1950's, and the "Big Three" were now in a position to offer a comprehensive product line. They also had the infrastructure necessary to support sales and training. Their aggressive marketing of general aviation and the resultant explosion in sales of general aviation aircraft reached its peak in the late 1970's. This spawned sharp growth in the support industries such as FBO's, mechanics, and support personnel.

By 1978-79, there were twenty-nine manufacturers of general aviation aircraft, including the "Big Three."<sup>19</sup> These manufacturers produced over 14,000 light piston general aviation aircraft,<sup>20</sup> and realized revenue of \$2.2 billion.<sup>21</sup> This revenue achieved a consistent balance of trade surplus with foreign countries.<sup>22</sup> These sales in turn supported 11,000 FBO's<sup>23</sup> and upwards of 560,000 jobs.<sup>24</sup>

### C. INDUSTRY "CRASH"

The tremendous growth of general aviation came to a halt in the early 1980's, when it entered a period of stagnation and decline. By the early 1990's the general aviation industry was decimated as demand for its products and services ebbed. A number of structural factors are helpful in explaining the declining fortunes of general aviation.<sup>25</sup>

A close look at these factors shows that general aviation had become a luxury, less and less accessible to the average person from the late

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*on Aviation of the Comm. of the House Comm. on Public Works and Transportation, 103d Cong., 1st Sess. 12 (1993) [hereinafter 1993 House Hearings].*

19. *Id.* at 8.

20. An average of 13,000 piston aircraft over the 1965-1982 period. *Id.*

21. *House Hearings, supra* note 18, at viii.

22. In 1978, this balanced of trade reached more than \$340 million. 1993 S. REP. NO. 202, 103d Cong., 1st Sess. 2 (1993) [hereinafter *Senate Report*].

23. 1993 *House Hearings, supra* note 18 at 25. (testimony of Mr. Edward W. Stimpson, President, General Aviation Manufacturers Association (GAMA)).

24. *Symposium, supra* note 14, at 15. (keynote address by Mr. Barry Harris Lambert, Acting Administrator, Federal Aviation Administration).

25. Among the structural factors making general aviation less attractive to current and prospective pilots and aircraft owners, and mitigating against an expanding market for new build general aviation aircraft:

- number and types of aircraft produced in the 1970's (130,000+)
- the durability and quality of the aircraft produced (average age of 28 years in 1994, projected to grow to 34 years by 2000)
- decline in real disposable income and increased costs (fuel, financing, pilot training)
- surge in commercial airline traffic following enactment of the Airlines Deregulation Act of 1978
- Congressional repeal of the investment tax credit (ITC) and flight training funds under the GI Bill
- Congressional imposition of the luxury tax [subsequently repealed. Author.]
- growth of the amateur-built "kit" industry
- relatively inexpensive cost of used aircraft
- urbanization and airspace access (closing general aviation airfields and restricting access to general aviation).

1970's onward. Despite attempts to bolster its flagging fortunes, economic and demographic challenges proved too much for general aviation industries. For the average American, profitability and affordability evaporated for operation and ownership of general aviation aircraft. Therefore, production stalled. Construction of light piston-engine aircraft by major, established manufacturers during the 1980's virtually ceased.

By 1993, only nine manufacturers of light pistons produced approximately 500 light piston aircraft.<sup>26</sup> In that year, Piper was still in the process of emerging from Chapter 11 bankruptcy protection and produced 2% of their 1978 total production; Beech was producing 18% of their 1978 total production; and Cessna was producing no light piston general aviation aircraft.<sup>27</sup> As the business of the "Big Three" dropped precipitously, so did the fortunes of their enormous network of suppliers and support providers. Component part manufacturers and general aviation support services suffered an equally sharp contraction. FBO's declined from a high of 11,000 to less than 4,900.<sup>28</sup> The number of people beginning pilot training (pilot starts) dropped to their lowest levels since the early 1960's.<sup>29</sup>

Marking the beginning of this "crash" was a sharp rise in the costs of insuring and defending against product liability actions relating to defective design and manufacture.<sup>30</sup> Aircraft builders had to deal with each aircraft's "liability tail," those real or imagined design or manufacture defects for which a company would be responsible. The costs associated with a products liability tail 10, 20, 30 and 40 years long rose dramatically.<sup>31</sup> In fact, it became the number one concern of all general aviation manufacturers.<sup>32</sup> The "crash" was also marked by a growing number of

26. 1993 House Hearings, *supra* note 22, at 8.

27. 1993 Senate Report, *supra* note 22, at 2.

28. 1993 House Hearings, *supra* note 18, at 25.

29. 1993 saw 78,000 student pilot starts as opposed to 135,000 at the high point in the early 1960's. *Id.* at 54.

30. See Restatement (Second) of Torts § 402A and Comments.

31. By 1980, Piper had a liability "tail" of 135,000+ active light piston aircraft and untold thousands of inactive and damaged aircraft that could be returned to serviceable condition at any time. *Id.* at 29.

32. For example:

- General aviation manufacturers paid \$24 million in awards, settlements, and defense costs in 1977. By 1987, this figure had reached \$200 million+.

- Between 1987 and 1992 . . . the industry paid claims and out-of-pocket expenses for product liability defense totaling about \$250 million a year.

- [In 1987] Beechcraft Aircraft Corp. estimated that it cost \$80,000 per aircraft to offset exposure for product liability (or 30+% of the cost of the average Beech product). The Beechcraft study analyzed 203 claims filed against the company between 1983 and 1986 and discovered that:

the average cost to win, lose, or draw was \$530,000

the average value of plaintiff's claims per accident was \$9.86 million, despite . . .

frivolous legal actions aimed at general aviation manufacturers.<sup>33</sup> By the mid 1980's, the industry came to the conclusion that it was necessary to focus on limiting its tremendous exposure to products liability actions. To their minds, this became important if the production of light piston aircraft for general aviation use was to revive in this country.

#### D. INDUSTRY POST-"CRASH" ADJUSTMENTS

Despite the view of the "Big Three" and various industry trade organizations such as the General Aviation Manufacturers Association (GAMA), all has not been gloom and doom in the industry. In 1992, sales of light piston aircraft kits were at an all-time high. Innovative kit manufacturers proliferated, filling the void left by the "Big Three."<sup>34</sup> Registration and certification of a multitude of modern, "state-of-the-art" experimental home-built aircraft skyrocketed.<sup>35</sup> This overshadows Piper Aircraft's stumbling attempts to emerge from the ashes of bankruptcy in 1993 and the industry's 20% growth in export billings.<sup>36</sup> The GAMA production statistics for light piston aircraft do not include kit manufacturers products and sales, nor up to 33% of production aircraft delivered and exported by the United States.<sup>37</sup> Interestingly, the GAMA research

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118 accidents attributable to pilot/operator error.  
 22 accidents attributable to improper maintenance.  
 21 accidents attributable to weather.  
 1 accident attributable to air traffic control (ATC).  
 1 accident attributable to other causes.  
 63 accidents attributable to undetermined causes.  
 0 accidents attributable to manufacturing defect.

*Id.* at 4-5. (Beechcraft Study quoted by Congressman James M. Inhofe).

- Piper chose to self-insure after the mid-1980's, but its last insured yearly premiums were in excess of \$40 million versus \$100 million in sales. *Id.* at 29. (testimony of Charles M. Suma, President and CEO, Piper Aircraft Corp.).

- Cessna has not produced a single light piston aircraft since 1986, yet it continues to be sued for nearly every accident involving a Cessna product regardless of cause. The company has been forced to spend an average of \$20-25 million each year in litigation costs since 1986. Interestingly, this figure almost exactly equals Cessna's yearly expenditures on R&D over the period 1965-1982. *Id.* at 27. (testimony of Russell W. Meyer, Jr., Chairman and CEO, Cessna Aircraft Co.).

33. Characterized as "frivolous" lawsuits or "automatic inclusion" by the general aviation industry, manufacturers of aircraft and component parts saw themselves increasingly joined as defendants whenever a light piston aircraft was involved in an accident. One particularly egregious incident involved Unison Industries, Inc. (a maker of piston engine magnetos and ignitions) being joined in the crash of a Cessna 206 off Oahu, Hawaii. After spending \$10-15,000 in mounting a defense, Unison discovered that its product was not even on the aircraft. In the words of Unison president Frederick B. Sontag, "[h]ow would you like to be sued for being in a bar fight and you weren't even in the bar?" This, after Unison was sued 35 times between 1983-93; none of the cases ever went to trial. *Id.* at 48.

34. 3,318 kits were sold in 1992. 1993 *Senate Report*, *supra* note 22, at 6.

35. In 1990, 1,115 were certificated by FAA and in 1989, 1,326 were certificated by FAA. *Id.*

36. *Id.* at 2.

37. *Id.* at 2.

figured prominently in Congressional hearings on GARA and portray the industry in imminent threat of destruction.

Despite the precipitous decline in deliveries and exports of light piston general aviation aircraft during the 1980's, the 1990's saw a rebound. Production of these aircraft by non-traditional sources swelled to around 3,500 light pistons a year. All sectors of the general aviation industry felt this rebound. Demand for component parts and support services grew, paralleling the slow to moderate growth returning to general aviation. While not comparable to the go-go years of the late 1960's and 1970's, the general aviation industry and community in the 1990's began to show signs of successful adjustment. The industry began to recognize society's changing economics and demographics which themselves signaled an end to limitless growth in the field of general aviation.

### III. A CALL FOR TORT REFORM

Beginning in the late 1970's, strident calls came from industry, as well as private citizens, for State and the Federal legislatures to enact tort liability reform in order to address a perceived crisis in the legal system. In particular, many manufacturers and providers of services faced an escalation of costs associated with defending against increasing numbers of often frivolous legal actions directed at their products. This forced increases in the price of their goods and services, and in turn, drove many consumer items off the market or out of reach. Consumers often turned to imports to satisfy their demand.

In no field of law did this crisis have a more profound and devastating effect than aviation products liability.<sup>38</sup> From being the unqualified world leader in the field of general aviation (from the number of aircraft produced, to the number of pilots certified), the United States general aviation manufacturing industry became a gutted hulk.<sup>39</sup> Members of the general aviation industry and pilot community became major players in an increasingly vociferous lobby favoring reform of the current tort sys-

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38. State "notice pending" (whereby a plaintiff need only insert 10-15 key words in the complaint in order to join a defendant) and the inherent difficulty in determining fault in general aviation aircraft accidents (because of lack of direct evidence and jury ignorance and distrust of aviation technology and FAA regulation) are often cited as the primary reasons general aviation manufacturers find themselves increasingly in court and forced to expend money defending such "automatic inclusions." *1993 House Hearings, supra* note 18 at 8, 49, and 19.

39. Whereas there were 29 U.S. manufacturers and 15 foreign manufacturers marketing general aviation aircraft in 1980, 1992 saw only 9 U.S. manufacturers and 29 foreign manufacturers marketing general aviation aircraft. *1993 House Hearings, supra* note 18, at 8. Furthermore, prior to 1981, general aviation and consistently achieved a balance of trade surplus; by 1992, the United States had a balance of trade deficit of +\$800 million, this despite the fact that U.S. registered light piston aircraft were being exported at an accelerating rate due to their low cost and high quality. *1993 Senate Report, supra* note 22, at 2.



tem, particularly aviation product liability. These efforts at reform were focused at the Federal level, where it was believed that the overarching Federal authority over aviation safety offered the best chance of achieving uniformity of legislation.<sup>40</sup>

Countering the calls for reform of the products liability system was an equally strident group, led by the American Trial Lawyers Association (ATLA).<sup>41</sup> ATLA, in general, proposes that the tort system as a whole, and products liability in particular, must meet changing societal needs and notions of safety in society. For a society that too often in the past had its safety sacrificed to economic growth and industrial prosperity, the extension of stricter standards of care into the field of products liability appeared to offer needed legal redress.

The ATLA membership opposed any tort reform favoring general aviation manufacturers for a number of reasons. Among these were: the iniquity of broad tort immunity being offered to a particular industry;<sup>42</sup> the laxity of FAA certification standards<sup>43</sup> and the certification process;<sup>44</sup>

40. Congressman Glickman, co-sponsor of GARA in the House of Representatives (H.R. 3087), stated, "[w]e have an industry that is Federally regulated from birth to death. There is no State involvement in the regulation of aviation from licensing of pilots to moving through airspace. It is a Federal issue. And therefore, there is a very strong case to be made that liability laws ought to be federalized or made uniform because you have an industry that is totally regulated from the Federal side of the picture." *1993 House Hearings, supra note 18*, at 7.

41. *Symposium, supra note 14*, at 62. (remarks of Brian E. Barents, President and CEO, Learjet Corporation).

42. Why should an industry that was enjoying great profitability, be granted tort immunity for up to 50 years of economic activity? The extent of the profitability of the "Big Three" as of 1992 was impressive: Cessna was sold to Textron for \$100 million. Beech recorded its highest revenues ever. Cessna and Beech both transitioned into production of corporate jets and multi-engine turbine aircraft. These aircraft are more profitable than single- or multi-engine light piston aircraft by a factor of ten. In light of this, ATLA argued that any reduction in liability would not assure production of light piston aircraft by the "Big Three." ATLA also argued limited liability would take away pilot and passenger rights to compensation. Furthermore, the fact that general aviation is viewed as an "inherently dangerous activity" mitigates against any lessening of the standard of care applied to general aviation products. *1993 House Hearings, supra note 18*, at 69-70, and 73. (testimony of Mr. Katzman, ATLA member).

43. FAA certification standards with respect to such safety issues as the installation of shoulder harnesses, seat slips, and "crashworthiness" do not bring the number of defective products to an acceptable level. A number of examples are germane. The following are aircraft types with chronic defects that have gone for long periods without any FAA mandated corrective action program being administered:

- Cessna 411 with lack of rudder authority during single engine operations.
- Cessna 210 with bladder fuel tanks that trap water.
- Mooney Turbo 210 with vapor lock.
- V-Tail Beech Bonanzas with a basic design flaw due to lack of aeronautical knowledge during the 1950's.
- Lear 23 crashes (over 50% of the aircraft built have crashed).
- Piper Malibu with an unprecedented number of crashed due possibly to a defective autopilot.

*Id.* at 70.

and manufacturer collusion in the National Transportation Safety Board (NTSB) accident investigations.<sup>45</sup> ATLA may have shrewdly concluded that reform efforts had weakened from consistent and dedicated opposition to legal reform over the past eight years. ATLA chose not to attend any of the hearings of GARA in an official capacity during 1993 or 1994. This absence, in part, allowed GARA to be enacted into law. It delivered an ominous message, though, to industry: "GARA satisfies ATLA."

#### IV. THE GENERAL AVIATION REVITALIZATION ACT OF 1994

##### A. GARA SCOPE

GARA<sup>46</sup> amended the FA Act to provide an eighteen-year Federal

44. FAA regulations provide for the certification of production aircraft under a Delegated Option Authority (DOA) whereby the manufacturer "switches hats" and acts as the FAA oversight authority with regard to granting an aircraft its type certificate. *Id.* at 71.

45. *Id.* at 71.

46. 49 U.S.C. § 40101. (1994). GARA provides that:

Sec. 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

(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 . . .

(b) EXCEPTIONS — SUBSECTION (a) does not apply-

(1) if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certificate or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, or 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 maintenance or operation of such aircraft, or the component, system, or subassembly, or other part, that is casually related to the harm which the claimant allegedly suffered;

(2) if the person for whose injury or death the claim is being made is a passenger for the purposes of receiving treatment for medical or other emergency;

(3) if the person for whose injury or death the claim is being made was not aboard the aircraft at the time of the accident; or

(4) to an action brought under a written warranty enforceable under law but for the operation of this Act.

(c) GENERAL AVIATION AIRCRAFT DEFINED— For the purpose of this Act, the term "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration, 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

statute of repose on civil actions for death or injury, or damage to property, relating to general aviation aircraft and their component parts. General aviation aircraft are broadly defined under GARA as all aircraft (unpowered, single-engine, or multi-engine; piston, turbine or jet; and fixed or rotary-winged) holding a valid FAA type or airworthiness certificate, carrying fewer than twenty people, and not engaged in passenger carrying operations at the time of the accident.<sup>47</sup> Not surprisingly, GARA provides four major exceptions. The eighteen-year statute of repose does not apply to cases in which: (1) the manufacturer misrepresents certain safety information to the FAA, (2) the claimant was a passenger for purposes of receiving medical or emergency treatment, (3) the claimant was not aboard the aircraft, and (4) actions are brought under manufacturer's written warranties.<sup>48</sup>

These exceptions notwithstanding, the 1994 House Committee on the Judiciary report on the Bill makes clear that GARA's goal is to cut off the product liability tail for general aviation manufacturers of aircraft and component parts after eighteen years.<sup>49</sup> On the other hand, the Bill preserves all civil actions against all other elements of the general avia-

accident, engaged in scheduled passenger-carrying operations as defined under regulations in effect under Federal Aviation Act of 1958 (49 U.S.C.App. 1301 et seq.) . . . at the time of the accident.

(d) RELATIONSHIP TO OTHER LAWS.— This section supersedes any State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable limitation period for such civil action established by subsection (a).

SEC. 3. OTHER DEFINITIONS.

For purposes of this Act-

(1) the term "aircraft" has the meaning given such term in section 101(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1301 (5)) [former section 1301(5) of Appendix to this title];

(2) the term "airworthiness certificate" means an airworthiness certificate issued under section 603(c) of the Federal Aviation Act of 1958 (49 U.S.C. 1423(c)) [former section 1423(c) of Appendix to this title] or under any predecessor Federal statute;

(3) the term "limitation period" means 18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft; and

(4) the term "type certificate" means a type certificate issued under section 603(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1423(a)) [former section 1423(a) of Appendix to this title] or under any predecessor Federal statute.

SEC. 4. EFFECTIVE DATE; APPLICATION OF ACT.

(a) EFFECTIVE DATE.— EXCEPT as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act [Aug. 17, 1994].

(b) APPLICATION OF ACT.— THIS Act shall not apply with respect to civil actions commenced before the date of the enactment of this Act [Aug. 17, 1994].

47. *Id.* § 40101(2)(c).

48. *Id.* § 40101 2(b)(1)-(4).

49. "Once a general aviation aircraft or component part crosses the specified age threshold, and unless one of the specified exceptions applies, the possibility of any act or omission on the part of its manufacturer in its capacity as a manufacturer - including any defect in the aircraft or component part ceases to be material or admissible in any civil action. . ." H.R. REP. NO. 103-525, 103d Cong., 2d Sess., pt. 2, at 6-7 (1994)[hereinafter *1994 House Report II*].

tion industry.<sup>50</sup> Additionally, and most importantly, GARA affirmatively preserves a role for State law. State law governs the adjudication of aviation products liability cases involving claims for defective design or manufacture.<sup>51</sup> The House Committee on the Judiciary was very careful to emphasize that it was voting the bill out of the committee as “a very limited Federal preemption of State law” which should be viewed as a “narrow and considered response to the ‘perceived’ liability crisis in the general aviation industry. . . . [R]ather than seeking to revise substantially a number of substantive and procedural matters relating to State tort law, [it] is limited to creating a statute of repose.”<sup>52</sup>

#### B. CONGRESSIONAL PURPOSE

The clear beneficiaries of this bill are general aviation airframe manufacturers with a liability tail of over eighteen years in piston aircraft. Congressional intent clearly reflects the views of industry testimony which characterized passage of the bill as a win-win proposition that protects both the interests of the industry and prospective claimants.<sup>53</sup> The purpose of GARA is two-fold. First, it seeks to provide the opportunity to restart large scale production of light piston general aviation aircraft in order to create jobs and exports.<sup>54</sup> Second, GARA avoids fundamental

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50. “. . . [V]ictims would . . . continue to be free to bring suits against pilots, mechanics, base operators, and other responsible parties where there is negligence or other misconduct is the proximate cause of the accident.” *Id.* at 7.

51. “. . . [I]n cases where the statute of repose has not expired, state law will continue to govern fully, unfettered by Federal interference.” *Id.*

52. *Id.* at 4, 6.

53. Any reduction in an injured plaintiff’s ability to bring suit against general aviation manufacturers would be far outweighed by the “boom” in manufacturing expected to come from the liability climate in the wake of passage of any statute of repose. Conversely, it was alleged that even if the industry did not rebound, the effect on an injured plaintiff’s ability to bring legal action was negligible. Passage of the statute of repose was a measured response that took into account manufacturer’s need. The effect on prospective claimant need for legal resort was likened to taking a sick family dog to a veterinarian/taxidermist. “[Whether the dog dies or is cured]. . . either way you get your dog back.” *1993 House Hearings, supra* note 18, at 60. (testimony of Monte Mitchell, President, Aircraft Electronics Association).

54. A sampling of 1993 House hearing testimony reveals the purported benefits of this legislation from industry’s point of view:

- Stevens Aviation Written Comment:

Premised on the production of 6,000 new light pistons a year, at an average cost of \$125,000 for the next five years, passage of this bill would create an additional \$2 billion in revenue and 12,800 jobs in the general aviation industry. *Id.* at 112.

- Testimony of Monte Mitchell, President, Aircraft Electronics Association:

. . . [A] statute of repose will be the major stimulus for the United States general aviation industry needs to reopen production lines . . . . This will create tens of thousands of new, stable, high-paying, private sector, manufacturing, engineering, and related support jobs. Not only will it help our industry, it will help the overall economy and help the local grocery store and barber shop as well as expand the local, State, and Federal tax revenues through payroll sales and related taxes. *Id.* at 59.

reform of the tort system. It does not preempt state law.<sup>55</sup> Facially, GARA's eighteen-year statute of repose accomplishes both purposes. More importantly, GARA implicitly appears to have come down firmly on the side of preserving the present tort system. The implications for the viability of light piston aircraft production, let alone the mass production of these aircraft, are not positive.

### C. GARA AND FA ACT "SAVINGS CLAUSE"

The Federal Aviation Act of 1958 vests "plenary authority to make and enforce safety regulation governing the design and operation of civil aircraft" in the Secretary of Transportation.<sup>56</sup> Under § 1421, the Secretary is authorized to promulgate "minimum standards governing the design, . . . and performance of aircraft, . . . as may be required in the interest of safety."<sup>57</sup> The Secretary has done this through the FAA in the form of comprehensive Federal Aviation Regulations (FARs).<sup>58</sup> As the FA Act and FARs indicate, the federal government exercises broad controls over the field of aircraft design and safety such that the regulation of each of these has traditionally been a matter of federal concern.<sup>59</sup>

Federal concern notwithstanding, the unamended FA Act left considerable power to the state. It did so by containing a broad general remedies "savings clause"<sup>60</sup> which provided: "[n]othing in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies." However, the FA Act was subsequently amended in the summer of 1994<sup>61</sup> to grant: "a remedy under this part in addition to any other reme-

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- Testimony of Charles B. Suma, President and CEO, Piper Aircraft Corp.:

New jobs in excess of 25,000 manufacturing . . . positions could easily be created within five years of the passage. Typically, these manufacturing-based jobs have an economic factor of one to four . . . *Id.* at 30-31.

- Testimony of Mr. Russel Meyer:

If we do not get this legislation [the production of piston aircraft] is all academic. [Cessna is] not going to go back into the production of single engine aircraft. [Cessna] will stay building jets and turbine aircraft . . . [However, in the event S. 1458 were adopted, Cessna would re-enter the business of manufacturing single-piston aircraft] the day this legislation is enacted.

1994 House Report II, *supra* note 48, at 50.

55. When asked to comment on the scope of the proposed legislation, Mr. Phil Boyer, President, Aircraft Owners and Pilots Association, stated: "as for this being looked at as any major form of tort reform. It is not." 1993 House Hearings, *supra* note 18, at 55.

56. Haynes, *supra* note 8, at 33. See H.R. Rep. No. 2360, 85th Cong., 2d Sess. 2 (1958), reprinted in 1958 U.S.C.C.A.N. 3741, 3741-42.

57. Haynes at 33-34. See 49 U.S.C. app. § 1421(a)(1) (West Supp. 1994).

58. Haynes, *supra* note 8, at 34.

59. *Id.*

60. 49 U.S.C. § 1506, Pub.L. No. 85-726, Title XI, § 1106, Aug. 23, 1958, 72 Stat. 798, repealed by 49 U.S.C. § 7(b), Pub. L. No. 103-272, 108 Stat. 1379(1994).

61. 49 U.S.C. § 40120(c) (1994) (this subsection is substituted for 49 U.S.C. app. § 1506).

dies provided by law."<sup>62</sup> This amendment is consistent with the legislative intent of the FA Act that state tort remedies and the law governing these remedies, as they apply to legal claims arising out of aircraft accidents, are not preempted by Federal statute. The meaning of this savings clause with respect to Congressional intent to preempt state common law in the regulation of aviation has been the source of important litigation that greatly affects general aviation's present and prospective liability exposure.

#### D. GARA AND FEDERAL PREEMPTION OF STATE PRODUCT LIABILITY LAW

There has been a great deal of litigation surrounding scope of the 1978 Airline Deregulation Act (ADA) amending the FA Act to provide for Federal preemption of State regulation of airline "rates, routes, or service."<sup>63</sup> The primary question at issue is whether § 1305(a)(1) only preempts state laws that relate to rates, routes, and services of air carriers, or additionally preempts state products liability actions relating to aircraft design or manufacture.<sup>64</sup> There is some division among the courts on this issue. The U.S. Supreme Court has not issued a decision on point, but in *Ray v. Atlantic Richfield Co.*,<sup>65</sup> the Court found state tort law preempted because of the dominant role that the federal government held and the dominant federal interest in effectuating a uniform system of safety regulations in that area.<sup>66</sup> The court in *Ray* stated that in certain areas analogous to aircraft safety, Congress intended to exclusively regulate without specifically stating so.<sup>67</sup>

Lower courts have spoken on the question of federal preemption under § 1305(a)(1). The Tenth Circuit in *Cleveland v. Piper Aircraft, Inc.*,<sup>68</sup> and the District Court of Kansas in *Sunbird Air Service v. Beech Aircraft Corp.*,<sup>69</sup> have allowed state tort law to operate because they believe Congress intended to preserve existing common law remedies under the ADA. These courts interpret Congressional refusal to remove the savings clause as an indication that state aviation product liability actions were not preempted.<sup>70</sup>

Defining the scope of federal interest in exclusively regulating air-

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62. 49 U.S.C. § 40120(c), (1994).

63. See 49 U.S.C. app. § 1305(a)(1) (West. Supp. 1994).

64. Haynes, *supra* note 8, at 34.

65. *Ray v. Atlantic Richfield Co.*, 435 U.S. 151 (1978).

66. *Id.* at 163.

67. *Id.*

68. *Cleveland v. Piper Aircraft, Inc.*, 985 F.2d 1438 (10th Cir. 1993).

69. *Sunbird Air Services v. Beech Aircraft Corp.*, 789 F. Supp. 360 (D.Kan. 1992).

70. *Piper Aircraft*, 985 F.2d 1438; *Sunbird*, 789 F. Supp. 360.

craft safety involves making a determination as to whether the FAA's statutory scheme in regulations preclude State common law remedies. In *Sunbird*, the court held that the regulations promulgated by the FAA were merely minimum safety standards which did not preclude a finding of negligence under state tort law.<sup>71</sup> According to this case, the Federal government has not evinced a dominant federal interest in exclusively regulating aircraft safety. But these decisions are not consistent if Congress, by its various amendments of the FA Act, intends to preempt state tort law as it relates claims of defective aircraft design or manufacture.

Congress has the power to preempt State products liability law under the Supremacy Clause of Article VI of the United States Constitution.<sup>72</sup> Under the test set out in the case of *Cipollone v. Liggett Group, Inc.*,<sup>73</sup> state law is preempted by Federal law under the Supremacy clause where:

(1) Congress, in a federal statute, explicitly states an intent to preempt state law; (2) in the absence of an express preemption, there is outright or actual conflict between federal and state law, thus, making compliance with both federal and state law in effect impossible; or (3) federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the states to supplement federal law.<sup>74</sup>

Arguably, GARA § 2(d) resolves this question by definitely addressing the statute of repose's relationship to other laws and the issue of the scope of Federal preemption of State law in the area of products liability actions.<sup>75</sup> GARA § 2(d) provides: "[t]his section supersedes any state law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable limitation period for such civil action established by subsection (a)."<sup>76</sup> Congress gave the various courts a definitive expression of federal legislative intent. It did so by failing to address federal preemption of state tort actions for aircraft accidents and by specifically preserving any and all state law not superseded. GARA § 2(d), in company with preservation of the 49 U.S.C. § 40120(c) general "savings clause," may be read as clarifying the scope and strengthening the role of state tort law applicability to aviation products liability actions.

According to the federal preemption test in *Cipollone*, the legislative intent behind GARA makes clear that state common law governs all actions for damages. State products liability standards specifically govern product liability actions for aircraft design or manufacturing defects up

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71. 789 F. Supp. at 362-62.

72. *Frontier Airlines, v. United Airlines*, 758 F.Supp. 1399, 1407 (D. Colo. 1989).

73. *Cipollone v. Liggett Group, Inc.*, 112 S.Ct. 2608 (1992).

74. *Id.* at 2617.

75. See 49 U.S.C. § 40101 (1994).

76. 49 U.S.C. § 40101 (1994).

until the period of repose commences. Rather than preempt state common law in the field of aviation accident litigation, GARA amends the FA Act such that the holdings in *Piper* and *Sunbird* have been positively affirmed. The holdings now have effect beyond their earlier jurisdictions and are binding on all future court decisions. They may now be regarded as the law of aviation product liability until the eighteenth year of the product's life.

## V. GARA EFFECTS

A close reading of GARA shows its critical effects on the aviation industry, the pilot-consumer, and the general public. GARA may drastically reduce the prospects for new light piston aircraft production while doing nothing to address the underlying reasons for liability exposure and the high costs of defending against product liability actions.

### A. GARA EFFECT ON INDUSTRY LIABILITY

#### 1. "Big Three"

GARA explicitly offers only two affirmative reductions in the cost of products liability exposure for manufacturers of light piston aircraft. GARA allows established manufacturers to calculate a product's liability tail for insurance purposes. Further, it relieves the "Big Three" and any other general aviation manufacturers of any products liability exposure for products built before August 17, 1976.<sup>77</sup> This offers the prospect of money being freed for research and development (R&D) investment in new and old piston-engine, general aviation aircraft. It promises the restart of production of these designs by established manufacturers.

An important qualification to GARA's affirmative aspects concerns insurance. Assistance to the industry depends on the willingness of insurers to write coverage for a product's first eighteen years. This is no mean feat in light of the propensity of aviation accident victims to litigate whenever possible.

Further, there are powerful incentives for the "Big Three" to focus production on turbine and jet aircraft: profitability and marketability. Single-engine aircraft are not as profitable or as marketable. This discourages investment of any savings from reduced liability exposure in general aviation R&D. Established manufacturers' willingness to rise to the challenge of engaging in large scale production to replace aging general aviation fleets is questionable.<sup>78</sup> More likely, these manufacturers

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77. Due to consolidation of the general aviation industry, there are only a few corporate entities in existence that will benefit from this.

78. Notwithstanding Cessna's commitment to build 2,000+ light piston aircraft per year at a new production facility it is constructing in Independence, Kansas. It remains to be seen



may use the reduced liability savings to pad more profitable ventures.

## 2. *Small Manufacturers*

GARA does nothing to address the probability of products liability action within the eighteen-year period of the statute of repose. Although most aviation product design and manufacturing defects are discovered in the first seven years of a product's life,<sup>79</sup> liability exposure for "automatic inclusion" actions<sup>80</sup> are affirmatively preserved for another eleven years. For start-up manufacturers and suppliers re-entering the market, eighteen years of liability exposure must be factored into financial plans and could be prohibitive.

Start-up manufacturers of aircraft and component parts will likely find themselves unable to accumulate the necessary capital to enter the market. This should be true because insurers are unwilling to enter the market unless there is a proven track record of safe operations. The prospect of existing levels of exorbitant premiums and terms new manufacturers enter or re-enter the market is daunting. Ironically, small manufacturers of production and kit-planes are at the cutting edge of aircraft and production technology. They are also virtually immune to the frivolous lawsuit.<sup>81</sup> This insulation from automatic inclusion in a lawsuit may be logically attributed to a number of factors. These include the manufacturers' small size, lack of capital, assumption of risk by the kit-builder and very detailed waivers of liability.

GARA artificially makes "Big Three" 1970's product lines freshly competitive in a market better suited to innovation and small production runs. The threat of "Big Three" production of proven product lines may force small manufacturers to leave the market or abort start-up, with no assurance the "Big Three" will re-start large-scale production or ensure the marketability of light piston general aviation aircraft.

## 3. *Component Parts Manufacturers*

GARA does nothing, for the most part, to insulate the manufacturers of engines and component parts from the present excessive liability exposure. First, the parts they manufacture are replaced in less than

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whether Cessna will be able to market and sell 2,000+ light aircraft an average cost of \$100,000+. If it is unable to do this, their investment in infrastructure in Independence, Kansas can, with little effort, be utilized to produce a product with better profit margins and marketability.

79. 1993 House Hearings, *supra* note 18, at 10.

80. "Automatic Inclusion" action refers to a generally held belief in the industry that if the opportunity to sue is there, a product liability suit is sure to be filed (i.e. opportunity leads to action).

81. *Symposium, supra* note 14, at 183. (Statement of Fred George, Technical Editor, *Flying Magazine*).

eighteen years. Second, changing FARs often require manufacturers to redesign their products before either the part's normal lifespan or eighteen years. These manufacturers will face continual liability exposure. GARA is particularly vague regarding the liability of piston engine manufacturers. Engines generally go through two to three re-builds in a typical 6,000 hour life-span. Each remanufacture will trigger a new eighteen year statute of repose period. Engine manufacturers and rebuilders will be subject to continuous liability. As engine production is capital intensive, manufacturers appear to possess great wealth. They become the new "deep pocket" and a tempting target for the "automatic inclusion" action. Whether the few piston engine manufacturers are willing and/or able to accept this shifted liability exposure may determine the fate of light piston aircraft in the wake of GARA.

#### 4. *Other Industry Actors*

GARA does nothing to insulate the aviation service industry from liability exposure to the "automatic inclusion" action. This sets the stage for maintenance shops being included in an increasing number of such suits. Plaintiffs will seek to join as many defendants as possible in a lawsuit, in the hope of obtaining complete financial relief. With fewer "deep pocket" manufacturers available as defendants, plaintiffs will resort to collecting a larger pool of smaller defendants. As most maintenance shops are small and poorly capitalized, this vital piece of general aviation infrastructure is exposed to much more potential liability under GARA for general aviation accidents than it was before GARA.

### B. GARA EFFECT ON CONSUMER SAFETY

In Congressional report after report, the stated intention of reform legislation is to remove the general aviation industry's liability tail. In turn, industry players could restart production of new light piston aircraft and their components. Manufacturers will use litigation savings to invest in R&D. They would incorporate the latest innovations in comfort and safety into their product lines. More new aircraft would inevitably lead to a reduction in the average age of the general aviation fleet, the safety of such aircraft would increase. Public access to general aviation would be preserved and enhanced. Finally, the public perception of general aviation as being modern and safe would be improved. This was the theory, at least, behind GARA.

The primary backers of GARA, apart from the major players in the industry, were general aviation pilots. This group was represented by the Aircraft Owners and Pilots Association (AOPA). AOPA traded away their members' legal rights against manufacturers of defectively designed

products older than eighteen years in return for vague promises of a new golden age of general aviation. The hope was that if manufacturers were relieved of the specter of product liability exposure, they would produce new models of cheap, reliable, and state-of-the-art aircraft. Pilots, the ultimate consumers of general aviation products, would trade legal rights which they were not likely to exercise<sup>82</sup> for the choices and safety new aircraft production would offer.

There are very few indicators that new choices will happen anytime soon. General aviation aircraft technology has matured to a level where advances in speed, reliability, and economics are unlikely to occur.<sup>83</sup> In fact, the only real room for significant improvement in aircraft design is in the field of crashworthiness. Yet, in this particular market, there is a maxim that safety does not sell. Furthermore, the general public has no ability to perceive the improved safety technologies. This is the root of manufacturers' litigation costs.<sup>84</sup>

The "Big Three" have no incentive to make massive expenditures for new, state-of-the-art product lines. Rather, the reverse is true. If the "Big Three" do resume production of light piston aircraft, the likelihood is that they will merely produce twenty-plus year-old designs. These designs neither advance protections for pilot-consumers, nor convince the general public that these aircraft are any safer.

GARA allows the "Big Three" to restart production of old aircraft designs with a proven market demand. The "Big Three" have little reason to invest scarce resources in light piston R&D. This will not change with the advent of superior technology and "crashworthiness" of the products of the small airframe manufacturers. GARA simply frees up funds previously used in litigation defense for R&D in turbine and jet aircraft. There is no requirement that established light piston manufacturers re-start production of these aircraft. GARA drastically improves the "Big Three's" competitiveness *vis a vis* small manufacturers of production and light piston kit aircraft. This is unfortunate. Small manufacturers are the only innovators in the industry, and their continued success and viability are put in jeopardy by GARA.

Another perverse effect of the statute of repose is that manufacturers are free of *any* product liability once their product's longevity exceeds

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82. They would be deceased or take the enlightened attitude that they were at fault in cases where they were only maimed!

83. Take for example the Beech Malibu and the Aerospatiale Tobago, two aircraft whose design is separated by about 20 years. The Tobago offers little improvement and arguable inferiorities. *Symposium, supra* note 14, at 183. (Statement by Fred George, Technical Editor, *Flying Magazine*).

84. It may said as a general rule that the general public views flying in light aircraft as "crazy" and "unnatural." The effect of any under the hood modifications to light piston designs is unlikely to change this attitude.

eighteen years.<sup>85</sup> This begs the question: what incentive is there for manufacturers of light aircraft to engineer their products to be safe after the statute of repose expires? Currently, American design and workmanship on general aviation aircraft have produced aircraft whose primary structures may conceivably be serviceable for more than a hundred years. But in light of the *Sunbird* holding that FAA regulations are merely a set of minimum design standards, manufacturers may choose to design their aircraft for an eighteen-year life. Pilots who fly eighteen-plus year old aircraft are cut free of any legal redress — even for crashes of aircraft designed to less stringent standards. AOPA and the pilots it represents may have traded their long-term safety and access to legal redress for industry negligence. The AOPA and its members may have pursued a false illusion of thousands of cheap, light pistons rolling off the production lines.

### C. GARA EFFECT ON PUBLIC SAFETY

GARA strengthens the role of state common law product liability standards. It does so by going beyond FAA aircraft certification standards and forces general aviation manufacturers to comply with society's evolving sense of risk. While this is a clear negative for the general aviation industry's liability exposure, it may be a positive for the community at large.

GARA affirms the fact that the FAA FARs are merely minimum standards.<sup>86</sup> Case holdings found them so years ago. Certification minimums do not attempt to offer society state-of-the-art protection, despite FAA claims to the contrary. Moreover, it may be said that the FARs are not meant to be the standard by which legal liability is judged, especially since the FAA prescribed varying levels of technical requirements for pilot, aircraft, and maintenance certification.<sup>87</sup>

Despite FAA claims to ensure state-of-the-art safety to the pilots of general aviation aircraft, their passengers and society in general, it may be said that the FARs are being weakened at the altar of industry revival. The adoption of a relaxed certification process for home-builts is a prime example. Already, kit-builts are considerably less safe than production aircraft. This may be also due to relaxed competition in the vacuum left by the "Big Three." If the FAA is applying increasingly flexible (read:

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85. Currently, manufacturers must correct defectively designed products interminably. Manufacturers point to FAR Part 21.3 for this proposition. Under FAR Part 21.3, manufacturers must report product defects to the FAA. Additionally, manufacturers point to 14 C.F.R. 145.63 which requires maintenance personnel to report product defects to the FAA. *1993 House Hearings, supra* note 18 at 40.

86. *Id.* at 362-63.

87. *See* 14 C.F.R. §§ 91, 121, 135 (1995).

lax) certification standards, will engine and component parts manufacturers be willing to shift to the riskier home-built market? The risk of accidents or increased liability exposure does not encourage the revival of light aircraft manufacturing.

## VI. SUMMARY AND CONCLUSIONS

Far from signaling a rebirth of the general aviation industry in the United States, GARA places the general aviation industry in a more precarious position. GARA does not address the reasons the general aviation industry is the target of the often frivolous "automatic inclusion" action. GARA does not address the high costs of defending against these actions. Finally, GARA does not address a multitude of non-legal factors making the general aviation industry unprofitable and inviable.

The general aviation industry would be well-served by a broad effort to change the public perceptions that make it the target of unfounded and costly litigation. The reduction of general aviation to the role of airshow performance reinforces a growing public perception that small aircraft flying is crazy, dangerous, and an inevitable prelude to an aluminum hailstorm. General aviation's re-direction toward large, sophisticated and expensive turbine and jet aircraft emphasizes profitability at the expense of utility. Limited public access portrays general aviation as the haunt of wealthy doctors, lawyers, and corporations. So long as the public perception regards general aviation as inherently unsafe and the preserve of the deep-pocket defendant, there will be incentive to bring suit based on the most minute chance of getting to the jury (and even more infinitesimal chance of winning). Liberal, modern-day civil procedure, which requires only the sketchiest facts to be pled,<sup>88</sup> and "automatic inclusion"<sup>89</sup> allow frivolous legal claims to reach the courtroom. Once at trial, public perceptions lead to placing the highest possible liability standards on the industry. Ultimately, the question of what is a defective general aviation product goes to a jury (with all the attendant risks to the innocent defendant).

GARA delays an accounting of the ills of the general aviation industry. It leaves untouched the sources of general aviation industry liability exposure in a misplaced reliance on economic forces. GARA cannot revive the industry. It places irrational competitive pressure on the most successful sectors of the industry: small production and kit manufacturers. These sectors of the industry are least likely to survive increased litigation costs. Large manufacturers will plow their savings into already vibrant turbine and jet products. Prospects for innovations in light piston aircraft

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88. FED. R. CIV. P. 8(b). *See supra* note 39 and accompanying text.

89. *See supra* note 81 and accompanying text.

technology will decrease. The likelihood of elderly aircraft soldiering on will increase. Pilot-consumers and the general public will be at more risk than ever before.

GARA may encourage manufacturers of airframes, both large and small, to contemplate an entry or re-entry into the general aviation market. But such decisions will take place in the shadow of lingering uncertainty. Eschewing this uncertainty, many entrepreneurs will sit on the tarmac — their “tails” clipped.