No. _____

In The
Supreme Court of the United States

CONTINENTAL MOTORS, INC.,

Petitioner,

v.

ELIZABETH SNIDER, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

WILL S. SKINNER
LAURIE ALBERTS SALITA
MACKENZIE W. SMITH
SKINNER LAW GROUP
101 Lindenwood Dr.,
Suite 225
Malvern, PA 19355
salita@skinnerlawgroup.com

DOUGLAS E. WINTER
Counsel of Record
TRACI CHOI
BRYAN CAVE
LEIGHTON PAISNER
1155 F St., N.W.
Washington DC 20004
(202) 508-6000 tel.
dewinter@bclplaw.com

Counsel for Petitioner
Continental Motors, Inc.

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Whether the preemptive statute of repose created by the General Aviation Revitalization Act, 49 U.S.C. § 40101, insulates the designer and manufacturer of a 37-year-old general aviation engine from liability for an accident whose sole cause was a forging defect in a new component part forged by another manufacturer.

CORPORATE DISCLOSURE STATEMENT

Continental Motors, Inc., is a wholly owned subsidiary of Continental Motors Group, which is a subsidiary of AVIC International Holding (HK) Limited, a Bermuda corporation that is publicly traded on the Hong Kong Stock Exchange. Neither Continental Motors, Inc., nor Continental Motors Group has issued shares to the public.

PARTIES TO THE PROCEEDING

Petitioner, and defendant below, is Continental Motors, Inc.

Respondents, and plaintiffs below, are Elizabeth C. Snider, individually and as executrix of the estate of Daniel A. Snider, and Lee W. Snider, a minor, by his mother, Elizabeth C. Snider.

Sterling Airways, Inc., was a defendant below, but has no interest in the outcome of the petition.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

No. _____

In The
Supreme Court of the United States

CONTINENTAL MOTORS, INC.,

Petitioner,

v.

ELIZABETH SNIDER, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Without this Court's intervention, an unprecedented interpretation of the General Aviation Revitalization Act, 49 U.S.C. § 40101, will stand despite its conflict with the plain language of the statute, statements of Congressional intent, and decisions of the United States Court of Appeals for the Sixth Circuit and the Ninth Circuit, the Washington Supreme Court, the Pennsylvania Supreme Court, and other federal and state courts.

Continental Motors, Inc., thus petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (App. 1) is reported at ___ Fed. Appx. ___, 2018 WL 6828422. That court's denial of Continental's motion for reconsideration (App. 71) is not reported.

The district court's opinion denying Continental's motion for the entry of judgment as a matter of law (App. 10) is reported at 2017 WL 6336596. Its opinion denying Continental's motion for a new trial and to alter or amend the judgment (App. 32) is reported at 2017 WL 2813223.

JURISDICTION

The court of appeals entered judgment on December 28, 2018. The court of appeals denied a petition for rehearing on January 22, 2019 (App. 71).

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This petition involves interpretation of the General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552, *reprinted in* Note, 49 U.S.C.

§ 40101 (App. 73). No constitutional provisions are involved.

STATEMENT

The General Aviation Revitalization Act of 1994 ("GARA"), Pub. L. No. 103-298, 108 Stat. 1552, is a preemptive federal statute of repose. GARA prohibits any civil claim for damages against a general aviation manufacturer if the accident said to have caused those damages occurred more than 18 years after delivery of the aircraft to its first purchaser, lessee, or person engaged in the business of selling or leasing aircraft. 49 U.S.C. § 40101, Note § 2(a). In passing GARA, Congress made it "clear that, 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(II) at 6 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1644, 1648.

The GARA statute of repose will restart ("roll") if a new component part is added to the aircraft within 18 years of the accident; but a new repose period applies only if that part caused the accident – and only to the entity that manufactured that part. GARA § 2(a)(2); H.R. Rep. No. 103-525(II).

The court of appeals, ignoring the plain language and legislative history of GARA – as well as precedent – declined to protect Continental Motors, Inc., the manufacturer of the 37-year-old engine at issue. Contrary to the Washington Supreme Court's holding – and a cardinal rule of statutory construction – that "[t]he meaning of 'manufacturer' under GARA is a question of law to be decided by the court," *Burton v. Twin Commander Aircraft, LLC*, 254 P.3d 778, 791 (Wash. 2011), and ignoring the Ninth Circuit's confirmation that GARA "creates an explicit statutory right not to stand trial," *Estate of Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1110 (9th Cir. 2002), the opinion under review approves the district court's decision – despite undisputed evidence – to submit this question to a jury. And the district court's instruction deemed Continental as the "manufacturer" merely because a third party's defective part was installed in a larger assembly of parts that Continental sold – in direct conflict with the Sixth Circuit's observation that "[GARA] cannot be reasonably construed as meaning that the 18-year period of repose for the entire engine is reset every time a single sub-part is replaced." *Crouch v. Honeywell Int'l, Inc.*, 720 F.3d 333, 343 (6th Cir. 2013).

As a result, an essential purpose of GARA – to avoid putting general aviation manufacturers to the expense of litigation and trial unless their products caused harm within 18 years of entering service – has been thwarted.

The Third Circuit's opinion betrays a hostility to this federal statute of repose – and to federal preemption – shown in its prior decisions, and subjects general aviation manufacturers to a patchwork of jury-driven regulation, contrary to the intent of GARA and the comprehensive regulatory scheme that Congress has enacted to ensure aviation safety.

Cases interpreting this rarefied statute are, not surprisingly, sparse. This Court has never considered GARA. As a result, despite the Third Circuit's designation of the opinion under review as "non-precedential," the opinion not only errs in denying GARA protection to Continental, but also affirms and endorses published district court orders that will be cited nationwide to the detriment of Congressional purpose and the general aviation manufacturers GARA was passed with near-unanimity to protect.

The petition for writ of certiorari should be granted.

A. Background

The Federal Aviation Act of 1958. For nearly a century, Congress has recognized that the aviation industry is "unique among transportation industries in its relation to the Federal Government," S. Rep. No. 85-1811 at 5 (1958), and that the laws and regulations governing aviation safety should be "uniform" across the United States. S. Rep. No. 69-2, 69th Cong., 1st Sess. 8 (1925), *reprinted in* Civil Aeronautics Legislative History of the Air Commerce Act of 1926 at 29.

To this end, Congress enacted the Federal Aviation Act of 1958, Pub. L. No. 85-726, 72 Stat. 731, which confirmed that "the Federal Government bears virtually complete responsibility for the promotion and supervision of this industry in the public interest." S. Rep. No. 85-1811 at 5. The Act's "cradle to grave" system of regulatory oversight has produced "an industry whose products are regulated to a degree not comparable to any other." H.R. Rep. No. 103-525(II) at 5-6 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1644, 1647. Even the pharmaceutical industry is "not subject to anywhere near the degree of federal supervision over the lifespan of the product." *Id*. at 6 n.10.

To fulfill its statutory obligation to "promote safe flight of civil aircraft in air commerce," 49 U.S.C. § 44701(a), the Federal Aviation Administration ("FAA") has issued a comprehensive set of design and production regulations applicable to aircraft and their engines. *See United States v. S.A. Empresa de Viacao Aerea Rio Grandense* (*Varig Airlines*), 467 U.S. 797, 805, 814 (1984); 14 C.F.R. pts. 23, 25, 27, 29, 31, 33, and 35. These regulations prescribe, among other things, airworthiness standards covering every aspect of an engine's design and construction, from ignition and lubrication systems to fuel and induction systems. *See* 14 C.F.R. §§ 33.11-33.39.

An aviation engine manufacturer must complete a three-step certification process to market its engines in the United States:

First, the manufacturer must obtain a type certificate, which signifies that the FAA has determined the engine "is properly designed and manufactured, performs properly, and meets the regulations and [the FAA's] minimum standards." 49 U.S.C. § 44704(a)(1); *see* 14 C.F.R. § 21.21.

Second, the manufacturer must acquire a production certificate, which is the FAA's determination that the manufacturer has "a quality system that ensures that each product and article conforms to its approved design and is in a condition for safe operation." 14 C.F.R. § 21.137; *see* 49 U.S.C. § 44704(c); 14 C.F.R. § 21.145.

Third, upon finding that the aircraft and its engine conform to the type certificate and are ready for safe operation, the FAA issues an airworthiness certificate. *See* 49 U.S.C. § 44704(d).

The FAA also pervasively regulates suppliers and after-market manufacturers that produce and sell replacement parts for type-certificated products. As a general rule, a manufacturer seeking to produce replacement parts for installation on type-certificated products must obtain a Parts Manufacturer Approval. *See* 14 C.F.R. § 21.303(a).

The General Aviation Revitalization Act of 1994. This comprehensive federal regulatory framework led Congress to enact, in 1994, a unique statute of repose for general aviation manufacturers: "a legal recognition that, after an extended period of time, a [general aviation] product has demonstrated its safety

and quality, and that it is not reasonable to hold a manufacturer legally responsible for an accident or injury occurring after [significant] time has elapsed." *Altseimer v. Bell Helicopter Textron Inc*., 919 F.Supp. 340, 342 (E.D. Cal. 1996), *quoting* 140 Cong. Rec. H4998, 4999 (daily ed. June 27, 1994) (statement of Rep. Fish).

Between 1978 and 1994, American production of single-engine airplanes and their engines declined ninety-five percent. H.R. Rep. No. 103-525(I) at 2 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638, 1639. Employment in the general aviation industry plummeted by as many as 100,000 jobs. *Id*.

Concluding that "the tremendous increase in the industry's liability insurance costs" had caused the "serious decline" in the manufacture and sale of American aircraft and parts, H.R. Rep. No. 103-525(I) at 1 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638, 1638, Congress amended the Federal Aviation Act with the General Aviation Revitalization Act of 1994 ("GARA"), Pub. L. No. 103-298, 108 Stat. 1552.

GARA is a "classic statute of repose." *Lyon v. Agusta S.P.A*., 252 F.3d 1078, 1084 (9th Cir. 2001). It prohibits civil damages actions "arising out of an accident involving a general aviation aircraft" (*i.e.*, civilian aircraft with fewer than 20 passenger seats, not operated in scheduled commercial service), if brought "against the manufacturer of the aircraft or . . . of any new component, system, subassembly, or other part" if the accident occurred more than 18 years after the aircraft's

delivery to its first purchaser, lessee, or person engaged in the business of selling or leasing aircraft. GARA §§ 2 and 3.

"GARA expressly preempts inconsistent state laws." *Pridgen (I) v. Parker Hannifin Corp.*, 905 A.2d 422, 425 (Pa. 2006). It "supersedes any State law to the extent that such law permits a civil action" to be brought after the 18-year period. GARA § 2(d); *see Burroughs v. Precision Airmotive Corp*., 93 Cal.Rptr.2d 124, 132 (Cal. App. 2000) ("GARA cannot be interpreted by reference to state law"). GARA thus "eliminates the power of any party to bring a suit for damages against a general aviation aircraft manufacturer, in a U.S. federal or state court, after [the 18-year] period" expires. *Blazevska v. Raytheon Aircraft Co*., 522 F.3d 948, 953 (9th Cir. 2008). "[T]he statute acts not just as an affirmative defense, but instead 'creates an explicit statutory right not to stand trial.'" *Id.* at 951, *quoting Estate of Kennedy*, 283 F.3d at 1110.

Congress intended GARA to ease the devastating financial burdens that tort litigation imposes on American general aviation manufacturers by "limiting the number of lawsuits aircraft manufacturers must defend." 140 Cong. Rec. H4998, 5003 (daily ed. June 27, 1994) (statement of Rep. Mineta). Congress was "deeply concerned" about "enormous product liability costs" and litigation expenses, and "believed that manufacturers were being driven to the wall because, among other things, of the long tail of liability attached to those aircraft, which could be used for decades after they were first manufactured and sold." *Lyon*, 252 F.3d

at 1084, *citing* H.R. Rep. No. 103-525(I) at 1-4 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638, 1638-41; *see Pridgen I*, 905 A.2d at 430-31. By ameliorating the impact of that "long-tail liability," GARA would foster the regeneration of essential domestic enterprises, create employment opportunities, and favorably affect the U.S.-foreign trade balance. *See* H.R. Rep. No. 103-525(I) at 2 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638, 1638-39. Indeed, the General Accounting Office reported that, in the five years after GARA's passage, the American general aviation industry created 25,000 new jobs. Gen'l Acct. Office, No. GAO-01-916, *General Aviation Status of the Industry, Related Infrastructure, and Safety Issues* (2001), *available at* www.gao.gov/new.items/d01916.pdf.

GARA's legislative history underscores the unique reasons for its existence:

> Studies indicated that "nearly all defects are discovered during the early years of an aircraft's life" and only a small percentage of general aviation accidents are caused by design or manufacturing defects. Furthermore, products in the aircraft industry are highly regulated "to a degree not comparable to any other [industry]." Manufacturers are required to report any incidents indicating product defects to the FAA, which has the responsibility for ordering corrective action if defects are revealed after an aircraft design is approved. Moreover, the older an aircraft gets, the more likely it is to have had a number of owners and to have undergone modifications, overhauls and other

> maintenance procedures. This makes it increasingly difficult as time passes to determine whether the manufacturer or some other person who used or repaired the aircraft was primarily responsible for a mechanical failure.

Burroughs, 93 Cal.Rptr.2d at 131, *citing* H.R. Rep. No. 103-525(I) and (II).

GARA is also a conscious and careful balancing of interests that "is designed to limit excessive product liability costs, while at the same time affording fair treatment to persons injured in general aviation accidents." H.R. Rep. No. 103-525(I) at 1 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638, 1638.

To maintain that balance, GARA has four exceptions. *See* GARA § 2(b). None applies here.

There is also a "rolling" provision, which is central to the issues presented. Under GARA § 2(a)(2), the repose period will restart ("roll") "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."

Thus, the repose period will roll only if "the revised part . . . caused [the] death, injury, or damage." *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155, 1158 (9th Cir. 2000); *see Schwartz v. Hawkins & Powers*

Aviation, Inc., 2005 WL 3776351, at *4 (D. Wyo. Apr. 8, 2005); *Hiser v. Bell Helicopter Textron Inc.*, 4 Cal.Rptr.3d 249, 257 (Cal. App. 2003). And the new repose period applies "only to the entity that manufactured the replacement part." *Campbell v. Parker-Hannifin Corp*., 82 Cal.Rptr.2d 202, 209 (Cal. App. 1999); *see Sheesley v. The Cessna Aircraft Co.*, 2006 WL 1084103, at *4 (D.S.D. Apr. 20, 2006) (GARA "only restarts the repose period for claims against the manufacturer of the new part that actually caused the crash"). This "provid[es] some certainty to manufacturers . . . while preserving victims' rights to bring suit for compensation in certain particularly compelling circumstances." H.R. No. 103-525(II) at 6, *reprinted in* 1994 U.S.C.C.A.N. 1644, 1648.

B. Facts and Procedural History

The Accident Aircraft and Engine. Petitioner Continental Motors, Inc., formerly known as Teledyne Continental Motors, Inc., designs and manufactures engines for general aviation aircraft. On October 22, 1968, the FAA issued a type certificate authorizing Teledyne to manufacture and sell a six-cylinder engine known as the TSIO-520-H.

In 1973, Cessna Aircraft Company manufactured a T210L single-engine aircraft equipped with a TSIO-520-H engine (the "accident aircraft"). Teledyne shipped the engine to Cessna in March 1973. Cessna sold the accident aircraft to its first purchaser in April 1973 (App. 11).

The Accident. More than 37 years later, on June 21, 2010, the U.S. Department of Agriculture Forest Service was conducting an aerial survey of tree defoliation in Pennsylvania. The Forest Service had contracted with Sterling Airways, Inc., to provide the accident aircraft and its pilot (App. 11).

The aircraft's engine failed minutes before a scheduled landing at Piper Memorial Airport in Lock Haven, Pennsylvania. The pilot and his two passengers, including Forest Service employee Daniel Snider, died (App. 11).

The Engine Part at Issue. The TSIO-520-H is a six-cylinder combustion engine. Combustion (burning) releases energy from a fuel-air mixture. The hot gases push a piston through each cylinder assembly, rotating the crankshaft and, through a system of power train gears, the propeller.

As its name underscores, a cylinder assembly is a compilation of parts. The FAA-approved design for the TSIO-520-H cylinder assembly consists of more than 40 discrete parts, some of which are manufactured by third parties.

One of those parts, the exhaust valve guide, is manufactured by Roderick Arm & Tool, a third-party, FAA-approved components supplier. All parties to this lawsuit agreed that the exhaust valve guide in the accident engine's No. 2 cylinder assembly fractured, which, in turn, caused the engine to fail. The essential dispute at trial was why that part failed.

The Aircraft Owner and Operator. Sterling Airways had last overhauled the engine on May 7, 2004, after 4,276 hours of operation. All six cylinder assemblies were replaced with new ones. The new No. 2 cylinder assembly included the Roderick-manufactured exhaust valve guide that failed (App. 19-20).

In 2007, the engine's No. 3 and No. 5 cylinder assemblies exhibited low compression, which could reduce engine power. A maintenance facility replaced the exhaust valve guides in these assemblies with new ones manufactured by another third party, Engine Components International. Sterling did nothing about the other four cylinder assemblies, including the No. 2 assembly, or the exhaust valve guides installed in those assemblies (App. 21).

The accident occurred three years later.

The Litigation. On May 31, 2012, Elizabeth Snider, individually and as executrix of the Estate of Daniel Snider and on behalf of Lee Snider, a minor, filed this lawsuit against Sterling and Continental in the Philadelphia County Court of Common Pleas. The Complaint alleged causes of action sounding in negligence, gross negligence, recklessness, strict liability, and breach of warranty. The action was removed to the U.S. District Court for the Eastern District of Pennsylvania (App. 33).

The Essential Allegations and Evidence. Because the undisputed evidence showed that the accident engine was 37 years old at the time of the accident – and that none of GARA's exceptions applied – the

GARA statute of repose vitiated any claims against Continental arising from this accident unless Snider could prove that the installation of a new part that caused the accident "rolled" the statute of repose as to the manufacturer of that part.

The relevant allegations and evidence were straightforward and few:

(1) Snider contended that the 2004 replacement of the Continental-branded No. 2 cylinder assembly in the aged engine "rolled" the GARA repose period.

(2) The only allegedly defective part in that assembly was the exhaust valve guide.

(3) Roderick Arm & Tool – a third-party, FAA-approved components supplier – forged that exhaust valve guide and sold it to Continental.

(4) After testing random samples of Roderick exhaust valve guides for hardness, Continental incorporated the exhaust valve guide into the cylinder assembly without altering its material composition or hardness.

(5) Snider's experts testified that the exhaust valve guide suffered from deficient forging – a manufacturing defect introduced by Roderick. This "lack of hardness" supposedly caused the guide to wear, which led to its fracture and, in turn, the engine failure and the accident (App. 30).

(6) Snider did not contend that the exhaust valve guide (or any other cylinder assembly component or the cylinder assembly itself) was defectively designed.

(7) Snider did not contend that any act of assembly by Continental caused or contributed to the failure.

(8) Snider did not contend that any other parts in the No. 2 cylinder assembly – or, indeed, the engine – were defective or a cause of the accident.

(9) Snider chose not to sue Roderick (App. 2).

The Jury Instructions and Verdict Form. Despite the undisputed provenance of the exhaust valve guide and the undisputed fact that only the exhaust valve guide caused the accident, the district court instructed the jury, over Continental's objection, that the larger "cylinder assembly" was the allegedly defective part at issue – and that the jury should decide whether Continental was the "manufacturer" of the assembly for purposes of GARA. The jury instructions used the words "cylinder assembly" 14 times, but never mentioned the exhaust valve guide. The district court also provided a verdict form, again over Continental's objection, identifying the allegedly defective product as the "cylinder assembly" (App. 53-54).

The district court thus foreclosed the jury from finding that Roderick had manufactured the defective component part – and instead forced the jury to make

the legal determination that Continental was the "manufacturer" of a new component part for purposes of GARA's "rolling" provision, and thus liable for Mrs. Snider's damages.

The Verdict. The jury found, as instructed, that Continental manufactured the No. 2 cylinder assembly; that the No. 2 cylinder assembly was defective; that Continental sold the No. 2 cylinder assembly without proper instructions or warnings for its safe use; and that these events were the cause of the accident. The jury found that Sterling breached its contract with the Forest Service and was negligent, but that this misconduct was not a factual cause of the accident (App. 12).

The district court entered judgment in favor of Ms. Snider and against Continental in the amount of $2,753,048.49, plus statutory "delay damages" of $443,550.51 (App. 12).

Continental brought a timely appeal.

The Opinion Under Review. The court of appeals explicitly found that the exhaust valve guides "were manufactured by a third-party" – and that "Mrs. Snider's evidence showed that a defective exhaust valve guide in the cylinder assembly failed" (App. 3) – but denied GARA protection to Continental:

> Although, as the district court recognized, "the cylinder assemblies incorporated exhaust valve guides" that were manufactured by a third-party, nevertheless the "exhaust valve guides (which were assigned Continental Part No.

> 636242) were designed by Continental and manufactured specifically for Continental[.]" Continental then tested the hardness of the exhaust valve guides and individually reamed each guide to specifically fit a particular Continental cylinder assembly. Based on this testimony, there was sufficient evidence for the jury to conclude that Continental "manufactured" the replacement cylinder assembly notwithstanding the precursor parts that Continental obtained from a third-party. Continental's replacement cylinder assembly was installed approximately six years before the accident, so we agree with the district court's conclusion that GARA's eighteen year limitation did not bar suit against Continental (App. 4-5; footnotes omitted).

On January 22, 2019, the court of appeals denied Continental's petition for rehearing (App. 71).

REASONS FOR GRANTING THE PETITION

The opinion under review abandons long-standing principles of statutory construction and judicial review, misreads GARA, and conflicts with consistent precedent, including decisions of the United States Court of Appeals for the Sixth and Ninth Circuits, the Washington Supreme Court, the Pennsylvania Supreme Court, and lower appellate courts.

First, as the Washington Supreme Court has held, "[t]he meaning of 'manufacturer' under GARA is a

question of law to be decided by the court." *Burton*, 254 P.3d at 791; *see Pridgen I*, 905 A.2d at 434-37. By ignoring precedent and approving the district court's decision – despite undisputed evidence – to submit this question to the jury, and then reviewing only the sufficiency of the evidence, the opinion also departed from cardinal principles of statutory construction and judicial review. *See, e.g.*, *Bingham's Trust v. Commissioner of Internal Revenue*, 325 U.S. 365, 371 (1945); *Leyse v. Bank of America, N.A.*, 804 F.3d 316, 319 (3d Cir. 2015).

As the Ninth Circuit pronounced, GARA "creates an explicit statutory right not to stand trial," *Estate of Kennedy*, 283 F.3d at 1110, and its primary purpose is averting litigation expenses through early judicial determination of its applicability. Consistent with statutory intent, the Pennsylvania Supreme Court has recognized that GARA's use of the word "manufacturer" should be interpreted to "comport with the federal policy of ameliorating . . . long-tail liability," *Pridgen I*, 905 A.2d at 432 n.10 – in other words, in a way that protects general aviation entities from "long-tail liability": "GARA cannot be interpreted in a way that would eviscerate its effect." *Burroughs*, 93 Cal.Rptr.2d at 138. When, as here, the only alleged defect is in the physical manufacture/forging of the part – and not its design – the "ordinary, contemporary, common meaning" of "manufacturer" is the physical manufacturer: Roderick. *Perrin v. United States*, 444 U.S. 37, 42 (1979). Snider was able to sue Roderick, but did not.

Second, GARA – not a plaintiff or a court – identifies the replacement "component, system, subassembly or other part" at issue. As the Sixth Circuit has observed: "GARA § 2(a)(2) refers to the *specific* 'part which replaced another . . . part . . . and which is alleged to have caused such death, injury, or damage.'" *Crouch*, 720 F.3d at 343 (emphasis added), *quoting* GARA § 2(a)(2); *see Caldwell*, 230 F.3d at 1158; *Carson v. Heli-Tech, Inc.*, 2003 WL 22469919, at *4 (M.D. Fla. Sept. 25, 2003). And this "rolling" provision "only restarts the repose period for claims against the manufacturer of the new part that actually caused the crash." *Sheesley*, 2006 WL 1084103, at *4; *see Campbell*, 82 Cal.Rptr.2d at 209; H.R. Rep. No. 103-525(II) at 7 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1644, 1649; *Theobald v. Piper Aircraft, Inc.*, 309 F.Supp.3d 1253, 1266 (S.D. Fla. 2018) (GARA § 2(a)(2) "applies only to the manufacturer of the new parts" and "requires . . . evidence that it was these new parts that caused" the accident).

The legislative history compels this interpretation. The House Judiciary Committee Report states: "Since the bill provides for a 'rolling' statute of repose, victims and their families will have recourse *against new component part manufacturers* for a part installed subsequent to delivery in the event of a crash *attributable to a structural defect or similar flaw in a new component part*." H.R. Rep. No. 103-525(II) at 6 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1644, 1647 (emphasis added).

Thus, for example, in *Campbell*, plaintiffs contended that GARA's "rolling" provision exposed Cessna to liability when vacuum pumps Cessna had installed in the original aircraft were replaced. "The trial court disagreed, interpreting the replacement parts provision as applying *only to the entity that manufactured the replacement part*." 82 Cal.Rptr.2d at 209 (emphasis added). Invoking the legislative history, the California court of appeal affirmed.

Third, the "rolling" provision does not extend to the manufacturer of a larger part or assembly or system in which a new component part is installed. *Campbell*, 82 Cal.Rptr.2d at 209; *Sheesley*, 2006 WL 1084103, at *4. Neither a plaintiff nor a court can redefine an aircraft component as a larger assembly to avoid application of GARA's statute of repose. In the words of the Pennsylvania Supreme Court: "GARA's period of repose is not displaced with respect to entire aircraft systems, such as the fuel system, by the replacement of component parts of such system." *Pridgen* (*II*) *v. Parker Hannifin Corp.*, 916 A.2d 619, 623 n.3 (Pa. 2007). But that is exactly what happened here. The district court, with the court of appeals' blessing, foreclosed the application of GARA and predetermined the outcome of the jury verdict by improperly characterizing the allegedly defective component as the broader "cylinder assembly" instead of the sole part the evidence showed to be defective: the exhaust valve guide.

By this reasoning, Cessna, which incorporated Continental's engine into its aircraft, would have no protection under GARA because Continental incorporated

Roderick's exhaust valve guide into its engine. Other courts have repeatedly and consistently rejected this faulty paradigm, holding that the installation of a replacement part into an assembly, system, engine, or aircraft does not vitiate GARA protection for the manufacturer of that assembly, system, engine, or aircraft. "Case law . . . focuses on the component that allegedly caused the crash, not the larger part that encompasses many smaller components, one of which was the allegedly deficient component." *Hinkle v. Cessna Aircraft Co.*, 2004 WL 2413768, at *8 (Mich. App. Oct. 28, 2004). As the Sixth Circuit has observed: "Section 2(a)(2) cannot be reasonably construed as meaning that the 18-year period of repose for the entire engine is reset every time a single sub-part is replaced." *Crouch*, 720 F.3d at 343. "[W]e would effectively permit plaintiffs to circumvent the GARA statute of repose by allowing plaintiff to bring suit against any manufacturer of a part when a sub-part (that is the actual cause of the accident) was replaced or added to it, even if the original part was over eighteen years of age." *Hinkle*, 2004 WL 2413768, at *8; *see Crouch*, 720 F.3d at 343; H.R. Rep. No. 103-525(II).

Here, the undisputed evidence showed that the exhaust valve guide was the part that caused the engine failure. The undisputed evidence showed that the exhaust valve guide was a single, discrete component part of the No. 2 cylinder assembly – which, as its name confirms, is an assembly of parts. The undisputed evidence also showed that the exhaust valve guide was a discrete part that could be installed on its own in

cylinder assemblies, as Sterling's maintenance provider did in 2007, when it replaced the exhaust valve guides in two of the engine's cylinder assemblies with ones designed and manufactured by an after-market seller. And there was no allegation or evidence that the cylinder assembly itself was defectively designed or assembled.

For these reasons, the Michigan Court of Appeals rejected the outcome below in *Hinkle*:

> We further reject plaintiff's contention that because the engine driven fuel pump is an integral part of the engine, Teledyne should be held liable for the failure of the fuel pump. Plaintiff has simply presented no evidence to support her claim that the engine was the cause of the accident rather than the engine driven fuel pump. Certainly, the fuel pump is an integral part of the engine, as is the engine an integral part of the plane itself. Were we to adopt plaintiff's reasoning . . . , we would effectively permit plaintiff to circumvent the GARA statute of repose by allowing plaintiff to bring suit against any manufacturer of a part when a sub-part (that is the actual cause of an accident) was replaced or added to it, even if the original part was over eighteen years of age. Case law, however, focuses on the component that allegedly caused the crash, not the larger part that encompasses many smaller components, one of which was the allegedly deficient component. 2004 WL 2413768, at *8.

The complications arising from the opinion under review should be obvious. As the record shows, aircraft owners, maintenance facilities, and repair stations can and do install after-market exhaust valve guides in Continental's cylinder assemblies. The opinion under review would allow plaintiffs to end-run GARA and hold engine manufacturers liable for manufacturing defects introduced by third parties simply because a component part was installed in a larger component or assembly or, indeed, the engine. But that is contrary to the explicit and plain language of the statute, which limits the "rolling" provision to the component part "which is alleged to have caused such death, injury, or damage. . . ." GARA § 2(a)(2).

Finally, even if the plain text of GARA did not foreclose further inquiry into the identity of the manufacturer of the replacement part at issue, the opinion erred by holding that conduct unrelated to the deficient forging of the defective part could vitiate GARA protection for Continental, which did not forge the part. The opinion blesses submission of the salient question of law – the identity of the manufacturer of the defective component part – to the jury based on the collateral (and, notably, undisputed) facts that "the exhaust valve guides (which were assigned Continental Part No. 636242) were designed by Continental and manufactured specifically for Continental[.] Continental then tested the hardness of the exhaust valve guides and individually reamed each guide to specifically fit a particular Continental cylinder assembly" (App. 4-5; quotations omitted).

None of these facts is germane to the GARA analysis.

Part Numbers. Continental, like many manufacturers, assigns part numbers to component parts manufactured by third-party suppliers. That does not magically transform Continental into the part's manufacturer, particularly when the actual manufacturer, Roderick, not only forged the part but also assigned it a part number. As plaintiff's expert admitted, each engine part "is given a part number" for an obvious reason: "so they know which part goes where in the engine. . . ." If Cessna, which assembled and sold the accident aircraft, had assigned a part number to Continental's engine, that would not transform Cessna into the engine's manufacturer. Indeed, in *Campbell*, plaintiffs argued that Cessna was the manufacturer of a defective part that had been replaced less than 18 years prior to an accident. The name "Cessna" was stamped on the part's dataplate, which also stated "Manufactured by Aeritalia Settore Strumentazione." The California court of appeal held: "[W]e are not persuaded that the mere appearance of the name Cessna on the part raises an inference that it was the manufacturer of the part so as to create a triable issue of fact on the question." *Campbell*, 82 Cal.Rptr.2d at 209.

Design and Purchase. The fact that Continental provided design specifications for the exhaust valve guide is also irrelevant: Snider conceded that there was no design defect. And a central concern of GARA is that products whose useful and safe designs have been proved by lengthy use should be protected. As the

Pennsylvania Supreme Court has observed: "[I]t would undermine Congress's purposes to hold that GARA's rolling provision is triggered by the status of original aircraft manufacturer, type certificate holder, and/or original designer alone." *Pridgen II*, 916 A.2d at 623; *see Pridgen I*, 905 A.2d at 436 ("status as type certificate holder and/or designer" is *not* "in and of itself sufficient to implicate GARA's rolling provision. . . .").

Likewise, the fact that Roderick manufactured the exhaust valve guide for Continental cannot transform Continental into the manufacturer of that part, especially when Roderick forged the part and failed to meet Continental's specifications. Continental merely purchased this part from its source. And the record showed that other companies manufactured after-market exhaust valve guides for installation in Continental cylinder assemblies (App. 21, 24-25).

In *Pridgen I* and *II*, the Pennsylvania Supreme Court held, consistent with other jurisdictions and congressional intent, that state law – in that case, Section 400 of the Restatement (Second) of Torts – could not be applied to subvert GARA protection by applying the rolling provision to "entities who are not actual manufacturers of the relevant replacement parts." *Pridgen I*, 905 A.2d at 432; *Pridgen II*, 916 A.2d at 623.

Testing and Assembly. The fact that Continental tested samples of Roderick-manufactured exhaust valve guides and incorporated valve guides into the cylinder assembly by reaming is also meaningless. Continental's testing is common sense (and FAA-required)

quality control. And there was no evidence that reaming rendered (or could have rendered) the guide defective. Any seller of a product that consists of multiple parts must connect those parts, whether by screws, bolts, nails, adhesion or, in this case, reaming. That act does not change the identity of the manufacturer of the part. And the court of appeals' theory is particularly disingenuous when there is no evidence (or even a contention) that reaming caused, created, or contributed to the alleged defect in the exhaust valve guide.

* * *

Courts have repeatedly rejected attempted definitions of "manufacturer" that restrict application of GARA, protecting even those who played no role in design or manufacture, including successors to the original manufacturer and agents of the manufacturer who, for example, merely tested parts. *See, e.g.*, *Pridgen I*, 905 A.2d at 436; *Campbell*, 82 Cal.Rptr.2d at 209; *Sheesley*, 2006 WL 1084103, at *4. The Pennsylvania Supreme Court rejected application of Restatement (Second) of Torts § 400 to hold a GARA-protected entity liable for replacement parts it did not manufacture but "that they hold out as their own," noting that "other courts have rejected similar efforts to apply state-law theories in a way that would circumvent GARA." *Pridgen I*, 905 A.2d at 436-37, *citing Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 550 (Iowa 2002). Although the Court noted there was no "creditable allegation" that the components at issue "were actually supplied by the defendant," 905 A.2d at 436, it did not reach the question whether Section 400 would apply in

those circumstances. GARA § 2(d) answers that question: the statute "supersedes any State law to the extent that such law permits a civil action . . . to be brought" after the repose period.

Which brings us full circle: GARA's rolling provision is restricted, by the statute's plain language, to the manufacturer of the new part that actually caused the accident. And when the only alleged defect and evidence concerns the physical manufacture of the part – forging – the ordinary, contemporary, common meaning of "manufacturer" is the physical manufacturer: here, Roderick. Continental should not pay the price for a plaintiff's failure to sue the correct party.

The Question Presented Is Important

Statutes should mean what they say. Congress passed GARA to protect manufacturers of aged general aviation aircraft, engines, and other products while allowing suits against the manufacturers of new replacement parts that cause harm. The court of appeals effectively rewrote that statute's preemption of state products liability regimes to impose liability on Continental, which did not manufacture the allegedly defective part at issue.

The Decision Splits Authority on the Interpretation of GARA. State high courts and the Ninth Circuit have held that "[t]he meaning of 'manufacturer' under GARA is a question of law to be decided by the court," *Burton*, 254 P.3d at 791, and that GARA "creates an explicit statutory right not to stand trial."

Estate of Kennedy, 283 F.3d at 1110; *see also Pridgen I*, 905 A.2d at 435-36. The Sixth Circuit has held, consistent with the statute's plain text, that the "rolling" provision applies only to the part that caused the accident and only to the manufacturer of that part. *See Crouch*, 720 F.3d at 343. The opinion under review conflicts with these decisions – and with Congressional intent – by deferring a question of law to the expense of trial and resolution by jury that GARA was enacted to avoid.

The Question Merits Review. The scope of GARA's preemption of state-law tort claims is important because the viability of the general aviation industry depends on the statute's protections. *See* H.R. Rep. No. 103-525(I) at 2 (1994), *reprinted in* 1994 U.S.C.C.A.N. 1638-39; Gen'l Acct. Office, No. GAO-01-916, *General Aviation Status of the Industry, Related Infrastructure, and Safety Issues* (2001), *available at* www.gao.gov/new.items/d01916.pdf. This Court has granted review in cases asking whether federal law preempts states from regulating the design of vehicles engaged in interstate commerce. *See, e.g.*, *Kurns v. Railroad Friction Products Corp.*, 565 U.S. 625, 633-37 (2012) (Locomotive Inspection Act preempts the field of locomotive equipment design); *United States v. Locke*, 529 U.S. 89, 111 (2000) (Title II of the Ports and Waterways Safety Act preempts the field of tanker design and construction). This case presents an even more compelling case for certiorari, because the aviation industry is "unique among transportation industries in its relation to the Federal Government." S. Rep. No.

85-1811 at 5 (1958). Not only is civil aviation a uniquely national mode of transportation, but the federal government's supervision of civil aviation exceeds that of virtually any other industry. *See* H.R. Rep. No. 103-525(II) at 6, *reprinted in* 1994 U.S.C.C.A.N. 1644, 1648.

This case is also an ideal vehicle to address the question presented. Whether GARA preempts state-law claims against a general aviation manufacturer for a manufacturing defect in another manufacturer's product is a question of law, and resolution of that question would be dispositive.

If allowed to stand, the Third Circuit's approach to GARA will vitiate the statute's careful balancing of the interests of accident victims and general aviation manufacturers by tipping the scale fully to the plaintiff's bar. Absent further review by this Court, the opinion will invite judges to place decisions about whether state-law tort claims are preempted in the hands of lay jurors.

This is not the first time the Third Circuit has shown hostility toward GARA and federal preemption of aviation safety. In *Robinson v. Hartzell Propellers, Inc.*, 454 F.3d 163, 173-74 (3d Cir. 2006), that court of appeals declined – in direct conflict with the Ninth Circuit and the Pennsylvania Supreme Court – to allow an interlocutory appeal from a district court decision denying GARA protection to an aviation manufacturer. *Compare Estate of Kennedy*, 283 F.3d at 1110; *Pridgen I*, 905 A.2d at 434 n.14. And in *Sikkelee v. Precision Airmotive Corp.*, 822 F.3d 680 (3d Cir. 2016), *petition for*

writ of certiorari pending, No. 16-323, that court declined to observe this Court's instruction on federal preemption. These decisions and the opinion under review collectively unhinge a federal statutory scheme designed to foster domestic manufacturing while promoting air safety. These decisions deprive GARA-protected manufacturers of appellate review in the absence of a costly trial, permit lay-jury opinions to trump FAA regulations, make it impossible for manufacturers to depend on uniform standards of care, and then subject manufacturers to liability for replacement parts they did not manufacture and for accidents they did not cause. This case affords this Court the opportunity to reinstate and further define GARA's scope to prevent the erosion of its protections.

CONCLUSION

For these reasons, this Court should grant the petition.

Respectfully submitted,

WILL S. SKINNER
LAURIE ALBERTS SALITA
MACKENZIE W. SMITH
SKINNER LAW GROUP
101 Lindenwood Dr., Suite 225
Malvern, PA 19355
salita@skinnerlawgroup.com

DOUGLAS E. WINTER
Counsel of Record
TRACI CHOI
BRYAN CAVE
LEIGHTON PAISNER
1155 F St., N.W.
Washington DC 20004
(202) 508-6000 tel.
dewinter@bclplaw.com

Counsel for Petitioner
Continental Motors, Inc.