

No._____

In the
Supreme Court of the United States



JADE SCHIEWE AND ZACH PFAFF,

Petitioners,

v.

CESSNA AIRCRAFT COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Oklahoma

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a maintenance manual prepared by a manufacturer of a general aviation aircraft is a part of an aircraft for the purposes of the General Aviation Revitalization Action of 1994, PL 103–298, August 17, 1994, 108 Stat 1552, 49 U.S.C. § 40101 note (“GARA”).
2. Whether the eighteen-year limitation period of GARA applies to maintenance manuals such that a general aviation aircraft manufacturer is immunized by GARA from liability for injuries arising from its negligence in failing to correct an erroneous provision of a maintenance manual where the manufacturer is aware of the error and the maintenance manual was published more than eighteen years prior to the incident which caused the injuries.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Petitioners below

Petitioners in this Court are Jade Schiewe (“Schiewe”) and Zach Pfaff (“Pfaff”) (collectively the “Plaintiffs”), Plaintiffs in the case filed in the Oklahoma state district court.

Respondent and Defendant-Respondent below

Respondent is Cessna Aircraft Company (“Cessna”) manufacturer of the general aviation aircraft which burst into flames during a training flight.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	vi
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. Factual Background	3
B. Procedural Background	6
REASONS FOR GRANTING THE PETITION	8
I. THE PROPER INTERPRETATION OF GARA IS AN IMPORTANT FEDERAL QUESTION WHICH HAS BEEN THE SUBJECT OF DISPARATE AND CONFLICTING DECISIONS BY COURTS OF APPEAL, STATE COURTS OF LAST RESORT AND NUMEROUS LOWER COURT DECISIONS.	8
II. THE SUPREME COURT OF OKLAHOMA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT	9
A. Review Should be Granted to Settle the Conflicting Decisions of Appellate Courts that exist Nationwide, both in Federal and State Courts	9

TABLE OF CONTENTS – Continued

	Page
B. The Proper Interpretation and Application of GARA Is an Important Federal Question for Review by the Supreme Court	16
CONCLUSION.....	20

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS**OPINIONS AND ORDERS**

Opinion, Supreme Court of the State of Oklahoma (March 12, 2024)	1a
Order Granting Motion for Reconsideration, Tulsa County, State of Oklahoma (March 8, 2023)	26a
Order Denying Motion to Vacate, District Court, Tulsa County, State of Oklahoma (April 18, 2023)	33a
Order Denying Summary Judgment in Favor of Defendant Cessna Aircraft Company, District Court, Tulsa County, State of Oklahoma (September 9, 2013)	35a

STATUTORY TEXT

General Aviation Revitalization Act of 1994	36a
---	-----

TABLE OF AUTHORITIES

	Page
CASES	
<i>Agape Flights, Inc. v. Covington Aircraft Engines, Inc.</i> , CIV-09-492-FHS, 2011 WL 2560281 (E.D. Okla. June 28, 2011)	14
<i>Alter v. Bell Helicopter Textron, Inc.</i> , 944 F. Supp. 531 (S.D. Tex. 1996)	14
<i>Burton v. Twin Commander Aircraft, LLC</i> , 254 P.3d 778 (WA 2011)	10
<i>Caldwell v. Enstrom Helicopter Corp.</i> , 230 F.3d 1155 (9th Cir. 2000)	10, 11, 12, 15
<i>Colgan Air, Inc. v. Raytheon Aircraft Co.</i> , 507 F.3d 270 (4th Cir. 2007)	9, 11
<i>Competitor Liaison Bureau, Inc. v. Cessna Aircraft Co.</i> , 454 Fed. Appx. 792 (11th Cir. 2011)	10
<i>Crouch v. Honeywell Int'l, Inc.</i> , 720 F.3d 333 (6th Cir. 2013)	9, 10, 14
<i>Estate of Grochowske v. Romey</i> , 340 Wis. 2d 611, 813 N.W.2d 687 (2012 WI App 41)	14
<i>Lunn v. Hawker Beechcraft Corp.</i> , OK CIV APP 12, 417 P.3d 1206 (2018)	11
<i>Mason v. Schweizer Aircraft Corp.</i> , 653 N.W.2d 543 (Iowa 2002)	10, 14
<i>Mississippi Band of Choctaw Indians v. Holyfield</i> , 490 U.S. 30 (1989)	12, 16
<i>Moyer v. Teledyne Cont'l Motors, Inc.</i> , 2009 PA Super 124, 979 A.2d 336 (2009)	9, 14

TABLE OF AUTHORITIES – Continued

	Page
<i>Moyer v. Teledyne Cont'l Motors, Inc.</i> , 611 Pa. 480, 28 A.3d 867 (2011)	9, 14
<i>Ovesen v. Mitsubishi XYZ Corporations</i> , 519 Fed. Appx. 722 (2d Cir. 2013)	10
<i>Pridgen v. Parker Hannifin, Corp.</i> , 916 A.2d 619 (PA 2007)	10
<i>Quinn v. AVCO Corp.</i> , 2023 WL 7547735 (3d Cir. Nov. 14, 2023).....	10
<i>Rogers v. Bell Helicopter Textron, Inc.</i> , 185 Cal. App. 4th 1403, 112 Cal. Rptr. 3d 1 (2010)	13
<i>S. Side Tr. & Sav. Bank of Peoria v. Mitsubishi Heavy Indus., Ltd.</i> , 401 Ill. App. 3d 424, 927 N.E.2d 179 (2010)	14
<i>Scott v. MD Helicopters, Inc.</i> , 834 F. Supp. 2d 1334 (M.D. Fla. 2011)	13
<i>Theobald v. Piper Aircraft, Inc.</i> , 309 F. Supp. 3d 1253 (S.D. Fla. 2018)	11, 14
<i>Tillman v. Raytheon Co.</i> , 430 S.W.3d 698 (Ark. 2013)	10
<i>U.S. Aviation Underwriters Inc. v. Nabtesco Corp.</i> , 697 F.3d 1092 (9th Cir. 2012)	10
<i>U.S. Aviation Underwriters, Inc. v. Raytheon Aircraft Co.</i> , 174 Fed. Appx. 833 (5th Cir. 2006)	10

TABLE OF AUTHORITIES – Continued

	Page
STATUTES	
28 U.S.C. § 1257(a)	2
49 U.S.C. § 40101	i, 2
The General Aviation Revitalization Action of 1994, PL 103–298, August 17, 1994, 108 Stat 1552.....	i, 2, 6-10, 12-22
JUDICIAL RULES	
Sup. Ct. R. 13	2
REGULATIONS	
14 C.F.R. § 21.3(a)-(c)	20
14 C.F.R. § 27.1581(a)(2)	11, 12
14 C.F.R. § 27.1585I	12
CONGRESSIONAL DOCUMENTS	
H.R. Rep. No. 103-525(I).....	16, 17
H.R. Rep. No. 103-525(II)	18
S. Rep. 103-202 (1993)	18
OTHER AUTHORITIES	
AC No: 20-77B, <i>Use of Manufacturer's Maintenance Manuals</i> , 1/4/16	20



PETITION FOR A WRIT OF CERTIORARI

Jade Schiewe and Zach Pfaff respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Oklahoma in this case.



OPINIONS BELOW

This Petition concerns the Order of the Supreme Court of Oklahoma affirming summary judgment in favor of Cessna, finding Cessna immune from liability pursuant to GARA, a federal statute of repose. The opinion of the Supreme Court of Oklahoma in *Schiewe v. Cessna Aircraft Co.*, No. 121,203 (App.1a-25a) is reported at 2024 OK 19, 546 P.3d 234.

The Order of the Supreme Court of Oklahoma in *Schiewe v. Cessna Aircraft Co.*, No. 121,203 (App.1a-25a), 2024 OK 19, 546 P.3d 234 decided an appeal from the District Court in and for Tulsa County, Oklahoma's Order Granting Motion for Reconsideration of Summary Judgment (App.26a-32a) (reversing its previous orders denying Cessna's motions for summary judgment). The Order Granting Motion for Reconsideration of Summary Judgment in *Jade P. Schiewe and Zachary Pfaff v Cessna Aircraft Company, et al.*, No. CJ-2011-4802 is not published in any reporter.

The Order of the Supreme Court of Oklahoma in *Schiewe v. Cessna Aircraft Co.*, No. 121,203 (App.1a-25a), 2024 OK 19, 546 P.3d 234 also decided the appeal of the District Court in and for Tulsa County, Oklahoma's Order Denying Motion to Vacate (App.33a-

34a) (denying Petitioners' motion to vacate the Order Granting Motion for Reconsideration of Summary Judgment). The Order Denying Motion to Vacate in *Jade P. Schiewe and Zachary Pfaff v. Cessna Aircraft Company, et al.*, No. CJ-2011-4802 (App.33a-34a) is not published in any reporter.



JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The opinion of the Supreme Court of Oklahoma in *Schiewe v Cessna Aircraft Co.* was entered on March 12, 2023. (App.1a). No petition for rehearing was filed with the Oklahoma Supreme Court. This Petition is timely. Sup. Ct. R. 13.



STATUTORY PROVISIONS INVOLVED

The significant issues of federal importance presented in this Petition involve the construction and application of GARA, 49 U.S.C. § 40101 note, § 2. GARA is a federal statute of repose barring tort actions against general aviation aircraft manufacturers where an accident occurs after the "limitation period" set forth in GARA. Section 3(3) of GARA defines "limitation period" as "18 years with respect to general aviation aircraft and the components, systems, subassemblies and part of such aircraft."

The entire text of GARA is reprinted in an appendix to this Petition (App.36a-39a).



STATEMENT OF THE CASE

A. Factual Background

This case involves an aircraft crash which occurred on September 28, 2010, involving Schiewe, as instructor pilot, and Pfaff, as student pilot respectively, in a Cessna Model 172RG which includes hydraulically retractable landing gear. Schiewe and Pfaff were on what was to be Pfaff's final instructional flight before the issuance of his commercial pilot's license. Both pilots were on an instructional and career path to become commercial aviation pilots.

During the flight, Mr. Pfaff selected the switch to lower the landing gear to perform a landing. Upon the activation of the landing gear switch, the pilots smelled smoke and observed a fire from under the instrument panel of the aircraft. Instructor pilot Schiewe took over the controls and attempted to maintain control of the aircraft as the fire burned in the lower center of the cockpit.

In order to control the aircraft, Schiewe was forced to keep his feet on the rudder pedals of the aircraft despite the pedals being engulfed in flames. Schiewe guided the aircraft into crash landing in a field adjacent to Jones Riverside airport in Tulsa, Oklahoma.

That landing saved the lives of Schiewe and Pfaff, but it completely destroyed the aircraft and caused both physical and psychological injuries to Schiewe and Pfaff that have prevented them from continuing the pursuit of their aviation careers.

The factual findings of the NTSB and FAA indicate that the fire source was a hydraulic power pack that actuates the forward landing gear of the 172RG aircraft. The NTSB investigator and Cessna's own Senior Safety Investigator concluded the only credible source of ignition to start the cockpit fire was an electric wire connected to the hydraulic power pack. Both the NTSB investigator and Cessna's investigator observed damage to the power pack housing from arcing where the electrical wire connects to the power pack.

As early as 1983, Cessna Aircraft apparently identified that this type of hydraulic power pack had the potential to create an electrical arc between the electric wire and the power pack housing, precisely where the NTSB and Cessna's investigator found arcing damage during their investigations.

Cessna Aircraft designed a silicone cap to ensure that the diode wire would be properly oriented and insulated from arcing to the pump body. Cessna added this cap, part number #S1807-1 to the Cessna Model 172RG parts catalog in a revision to the catalogue in June of 1983. However, Cessna failed to update or annotate the Cessna Model 172RG Service Manual to instruct aircraft mechanics that a new part had been added and how such part was to be installed.

Cessna's corporate representatives testified Cessna should have revised its Cessna Model 172RG Service Manual at the time it added the cap to the Cessna Model 172RG parts catalog to instruct aircraft mechanics that a new part had been added and how such part was to be installed.

Cessna only added the part and instructions on its installation to the Cessna Model 172RG Service Manual in 2012, after being required to do so by the FAA, as a result of the accident at issue in this case. Pursuant to FAA regulations and licensing requirements for aircraft mechanics, aircraft mechanics are not authorized to deviate from the instructions provided in the official model type service manual for an aircraft.

Subsequent to the crash and investigation in this case on October 3, 2012, Cessna issued a Service Letter SEL-29-01 which detailed the correct orientation and installation of the Hydraulic Power Assembly, including instruction on installation of a cap/boot to reduce the possibility of electrical arcing. Cessna issued the Service Letter only after the FAA indicated that it was in the process of issuing an Airworthiness Directive to ensure proper installation of the wires and insulating cap on the Hydraulic Power Pack Assembly and which could have resulted in the grounding of Cessna Model 172 RG aircraft.

Because the Cessna Model 172RG Service Manual was not updated to include the necessity of, or the installation procedure for, this insulating cap, or any annotation for the proper orientation of the diode wire, the aircraft flown by Schiewe and Pfaff did not have such a cap installed or the wire properly oriented.

Cessna's negligent failure to update or annotate the official service manual for the aircraft was a proximate cause of the fire, the resulting crash, and the injuries and damage to Plaintiffs.

Importantly, Plaintiffs and Cessna stipulated that Plaintiffs did not allege a products liability claim

against Cessna. Plaintiffs did not allege the design of the Model 172RG was defective; Plaintiffs did not allege there was any defect in the manufacture of the Model 172RG; and Plaintiffs did not allege Cessna failed to warn them of any defect or the potential for the landing gear assembly to catch fire during operation. Instead, Plaintiffs' claims were based on simple negligence: Cessna knew its maintenance manual did not correctly instruct mechanics on the installation of the hydraulic power pack for the landing gear in the 172RG and failed to take corrective action. Cessna's intentional acts were the direct and proximate cause of the mid-air fire and the resulting injuries to Plaintiffs.

B. Procedural Background

The complete procedural background for this case is complex. Schiewe and Pfaff filed this lawsuit against Cessna and other defendants on August 29, 2011 in the District Court in and for Tulsa County, State of Oklahoma. Plaintiffs settled their claims against other defendants leaving Cessna the only defendant at the time the Supreme Court of Oklahoma issued its Opinion which is the subject of this Petition (App.1a-25a).

Cessna filed the first of numerous dispositive motions in this case, a motion of summary judgment, on October 18, 2012, arguing that Plaintiffs' claims were barred by GARA, contending the eighteen-year limitations period therein had expired before the September 28, 2010, aircraft accident.

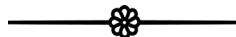
After its initial motion for summary judgment, Cessna filed several additional renewed motions for summary judgment. All of the motions for summary

judgment were denied by the trial court until March 3, 2023, when the trial court issued a minute order reversing its early denials of the multiple dispositive motions by Cessna based on GARA. On March 8, 2023, the trial court entered its Order granting Cessna's motion for summary judgment, finding GARA barred Plaintiffs' claim alleging negligence in preparation and maintenance of the maintenance manual for the subject aircraft.

On March 29, 2023, Plaintiffs filed in the trial court a motion to vacate the order granting summary judgment in favor of Cessna. On April 3, 2023, Plaintiffs filed their Petition in Error, appealing the trial court's order granting summary judgment in favor of Cessna. On April 18, 2023, the trial court issued its order denying Plaintiffs' motion to vacate. Under the Rules of the Supreme Court of Oklahoma, appeals of dispositive motions are governed by accelerated appeal procedures, which provide that no appeal brief may be filed without leave of the appellate court. Plaintiffs filed a motion for the Supreme Court of Oklahoma to retain the appeal as opposed to referring the same to Court of Civil Appeals, which motion was granted on June 21, 2023. Plaintiffs also filed a motion to allow appeal briefs to be filed in accordance with the accelerated appeal procedures. On April 4, 2024, after issuing its opinion affirming the trial court's grant of summary judgment, the Supreme Court of Oklahoma issued its order that Plaintiffs' motion for leave to submit appellate briefs was not affirmatively granted and therefore deemed denied.

Because of Oklahoma's accelerated appeals procedure and the Supreme Court of Oklahoma's rejection of Plaintiffs' request that appeal briefs be allowed, the

only appellate decision of this case was made on a tortured record containing at least eleven motions by Cessna (involving at least twenty-two briefs) asserting it was entitled to summary disposition of this case under GARA and, importantly, without the aid of appellate briefs which inherently differ from briefs to a trial court in terms of approach, depth and analysis.



REASONS FOR GRANTING THE PETITION

I. THE PROPER INTERPRETATION OF GARA IS AN IMPORTANT FEDERAL QUESTION WHICH HAS BEEN THE SUBJECT OF DISPARATE AND CONFLICTING DECISIONS BY COURTS OF APPEAL, STATE COURTS OF LAST RESORT AND NUMEROUS LOWER COURT DECISIONS.

The issue of whether manuals issued by an aircraft manufacturer constitute the aircraft or the components, systems, subassemblies, and other parts of such aircraft for the purposes of the GARA statute of repose has been addressed by several United States court of appeals, state appellate courts of last resort, and several lower federal and state lower courts. In the opinion which is subject of this Petition, the Supreme Court of Oklahoma held maintenance manuals are a part of a general aviation aircraft covered by GARA's limitation period. (App.19a-23a). The Supreme Court of Oklahoma also held that a maintenance manual is a part of an aircraft for the purposes of the so-called rolling provisions of GARA. (App.23a-25a).

The Supreme Court of Oklahoma's opinion that the maintenance manual is a part of a general aviation aircraft conflicts with the following decisions:

1. *Colgan Air, Inc. v. Raytheon Aircraft Co.*, 507 F.3d 270, 277 (4th Cir. 2007) (determining that a maintenance manual is not a "part" of an aircraft for purposes of warranty claims);
2. *Crouch v. Honeywell Int'l, Inc.*, 720 F.3d 333, 342 (6th Cir. 2013) (an overhaul manual is not a part of an aircraft for purposes of GARA rolling provisions);
3. *Moyer v. Teledyne Cont'l Motors, Inc.*, 2009 PA Super 124, ¶ 14, 979 A.2d 336, 346 (2009), *aff'd*, *Moyer v. Teledyne Cont'l Motors, Inc.*, 611 Pa. 480, 28 A.3d 867 (2011) (a manual is not a part for purposes of GARA rolling provisions).

II. THE SUPREME COURT OF OKLAHOMA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

A. Review Should be Granted to Settle the Conflicting Decisions of Appellate Courts that exist Nationwide, both in Federal and State Courts

Since Congress enacted GARA, there have been more than 150 reported and unreported decisions interpreting and applying GARA, none of which have nationwide precedential effect, and most of which have limited, if any, precedential effect in a given jurisdiction.

GARA cases are sometimes litigated in state court. The highest courts in just five (5) states – Arkansas, Iowa, Oklahoma, Pennsylvania, and Washington – have addressed the merits of GARA appeals. *Schiewe v. Cessna Aircraft Co.*, 546 P.3d 234 (OK 2024); *Tillman v. Raytheon Co.*, 430 S.W.3d 698 (Ark. 2013); *Burton v. Twin Commander Aircraft, LLC*, 254 P.3d 778 (WA 2011); *Pridgen v. Parker Hannifin, Corp.*, 916 A.2d 619 (PA 2007); *Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543 (Iowa 2002).

To the extent that GARA cases are litigated in federal court, the appellate decisions on the merits have primarily come from the Ninth Circuit, with a few decisions coming from the Second, Third, Fifth, Sixth, and Eleventh Circuits. See, e.g., *Ovesen v. Mitsubishi XYZ Corporations*, 519 Fed. Appx. 722 (2d Cir. 2013) (summary order); *Quinn v. AVCO Corp.*, 22-1596, 2023 WL 7547735 (3d Cir. Nov. 14, 2023); *U.S. Aviation Underwriters, Inc. v. Raytheon Aircraft Co.*, 174 Fed. Appx. 833, 834 (5th Cir. 2006); *Crouch v. Honeywell Int'l, Inc.*, 720 F.3d 333 (6th Cir. 2013); *U.S. Aviation Underwriters Inc. v. Nabtesco Corp.*, 697 F.3d 1092 (9th Cir. 2012); *Competitor Liaison Bureau, Inc. v. Cessna Aircraft Co.*, 454 Fed. Appx. 792 (11th Cir. 2011).

As pertinent to the matter *sub judice*, there are two (2) kinds of manuals for a general aviation aircraft: flight manuals and maintenance/service manuals. Flight manuals are required by federal regulations, and are an integral part of an aircraft because they contain the instructions that are necessary to operate the aircraft. *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155, 1158 (9th Cir. 2000). Maintenance manuals, on the other hand, outline procedures for

servicing, troubleshooting, and repairing aircraft and are used by a mechanic on the ground to service a plane, not by a pilot in the air to fly a plane; they are not required to be on the aircraft; they may be sold separately and the manufacturer need not perform the maintenance on the aircraft. *Colgan Air, Inc. v. Raytheon Aircraft Co.*, 507 F.3d 270, 277 (4th Cir. 2007) (determining that a maintenance manual is not a “part” of an aircraft for purposes of warranty claims). Nor is the maintenance manual the sole means by which an aircraft can obtain airworthiness. *Id.* In contrast to a flight manual, there is no federal regulation requiring that a service manual be on board every plane.

Courts appear to agree that a flight manual is subject to the “limitation period” in GARA, and revisions to the flight manual trigger the rolling provisions of GARA, if the revisions are causally related to the accident. *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155, 1158 (9th Cir. 2000); *Theobald v. Piper Aircraft, Inc.*, 309 F. Supp. 3d 1253, 1266 (S.D. Fla. 2018); *Lunn v. Hawker Beechcraft Corp.*, 2018 OK CIV APP 12, ¶ 17, 417 P.3d 1206. As noted by the Ninth Circuit Court of Appeals,

As a matter of logic, there are only two possibilities. Either an aircraft’s flight manual is a part of the aircraft, or it is a separate product. Federal regulations require that manufacturers of helicopters include a flight manual with each helicopter and require that the manual contain “information that is necessary for safe operation because of design, operating, or handling characteristics.” 14 C.F.R. § 27.1581(a)(2). The manual specific-

ally must include information about a gas tank's unusable fuel supply, if the unusable portion exceeds one gallon or five percent of the tank capacity. *See id.* § 27.1585I. In the face of these requirements, there is no room to assert that a helicopter manufacturer's manual is a separate product. By the rule of the excluded middle, then, it must be part of the aircraft.

In other words, a flight manual is an integral part of the general aviation aircraft product that a manufacturer sells. It is not a separate, general instructional guide (like a book on how to ski), but instead is detailed and particular to the aircraft to which it pertains. The manual is the "part" of the aircraft that contains the instructions that are necessary to operate the aircraft and is not separate from it. It fits comfortably within the terminology and scope of GARA's rolling provision.

Caldwell, 230 F.3d 1155, 1157 (9th Cir. 2000).

Courts are divided, however, on whether a maintenance manual is subject to the "limitation period" in GARA or in its rolling provision. The different conclusions reached by the various state and federal courts run contrary to the purpose of a federal statute, which is to have "uniform nationwide application." *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43 (1989).

Review by this Court is essential to ensure uniform application of the "limitation period" in GARA and its rolling provision and to provide guidance to the state and lower federal courts. There appear to

be three (3) lines of cases as to whether a maintenance manual is subject to the “limitation period” in GARA, the rolling provision, or both.

First, a minority of courts have held that a maintenance manual is not subject to the “limitation period” in GARA or its rolling provision. *Scott v. MD Helicopters, Inc.*, 834 F. Supp. 2d 1334, 1340 (M.D. Fla. 2011) (“Because a maintenance manual is not a part, GARA does not bar claims involving maintenance manual defects”); *Rogers v. Bell Helicopter Textron, Inc.*, 185 Cal. App. 4th 1403, 1405, 112 Cal. Rptr. 3d 1, 2 (2010), *as modified on denial of reh’g* (June 30, 2010) (finding that a maintenance manual, which need not necessarily be used in performing maintenance on the aircraft, could not reasonably be deemed a “part” of the aircraft for purposes of GARA). In these decisions, the courts reason that the “limitation period” of GARA and its rolling provision only apply to “general aviation aircraft and the components, systems, sub-assemblies, and other parts of such aircraft.” *Rogers*, 185 Cal. App. 4th 1403, 1405, 112 Cal. Rptr. 3d 1, 2 (2010), *as modified on denial of reh’g* (June 30, 2010) (citing GARA § 3(3)). Because a maintenance manual is not a general aviation aircraft or a “component[], system[], subassembly[], [or] other part[] of such aircraft,” these courts find that a maintenance manual is not subject to the “limitation period” in GARA or in its rolling provision.

Second, the majority of courts have held that a manufacturer supplies a maintenance manual “in its capacity as a manufacturer” and therefore any claim relating to the maintenance manual is subject to the “limitation period” in GARA. *See Schiewe v. Cessna Aircraft Co.*, 2024 OK 19, ¶ 13, 546 P.3d 234, 241;

Crouch v. Honeywell Int'l, Inc., 720 F.3d 333, 340 (6th Cir. 2013); *Estate of Grochowske v. Romey*, 2012 WI App 41, ¶ 36, 340 Wis. 2d 611, 638, 813 N.W.2d 687, 701; *Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 550 (Iowa 2002).

Third, even in the majority, the courts are split on whether a subsequent revision to a maintenance manual triggers the rolling provision of GARA.

Some of these courts find that a revised maintenance manual is a new “part” for the rolling provision. *Schiewe v. Cessna Aircraft Co.*, 2024 OK 19, ¶ 18, 546 P.3d 234, 242; *Theobald v. Piper Aircraft, Inc.*, 309 F. Supp. 3d 1253, 1267 (S.D. Fla. 2018); *Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 552 (Iowa 2002).

Other courts conclude that a revised maintenance manual is not a new “part” for the rolling provision. See *Crouch v. Honeywell Int'l, Inc.*, 720 F.3d 333 (6th Cir. 2013); *Estate of Grochowske v. Romey*, 813 N.W.2d 687, 698 (Wis. 2012); *Moyer v. Teledyne Cont'l Motors, Inc.*, 2009 PA Super 124, ¶ 14, 979 A.2d 336, 346 (2009), *aff'd*, *Moyer v. Teledyne Cont'l Motors, Inc.*, 611 Pa. 480, 28 A.3d 867 (2011); *S. Side Tr. & Sav. Bank of Peoria v. Mitsubishi Heavy Indus., Ltd.*, 401 Ill. App. 3d 424, 445, 927 N.E.2d 179, 197 (2010); *Alter v. Bell Helicopter Textron, Inc.*, 944 F. Supp. 531, 538 (S.D. Tex. 1996); *Agape Flights, Inc. v. Covington Aircraft Engines, Inc.*, CIV-09-492-FHS, 2011 WL 2560281, at *6 (E.D. Okla. June 28, 2011).

The different conclusions among the country’s state and federal appellate courts as to whether a maintenance manual is subject to the “limitation period” in GARA, the rolling provision, or both,

epitomizes why this Court should grant certiorari. Simply put, a reviewing court cannot properly apply the “limitation period” applicable to GARA and its rolling provision without a uniform determination by this Court that a maintenance manual falls within the application of GARA in the first place and, if so, whether a maintenance manual also falls under the rolling provision as the “limitation period” in both applies to “general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft.”

In this case, the Supreme Court of Oklahoma mistakenly applied GARA in a manner that provides blanket immunity for a maintenance manual once the passage of eighteen years accrues, reasoning that the manufacturer issued the maintenance manual “in its capacity as a manufacturer.”

Yet, the Supreme Court of Oklahoma did not explain how the maintenance manual, which is not a “general aviation aircraft [or] the components, systems, subassemblies, and other parts of such aircraft” is subject to the “limitation period” in GARA. Rather, Oklahoma’s court of last resort extended the language in GARA to include maintenance manuals despite the same not being listed in the terms used to define to what the “limitation period” applies.

As noted by the Ninth Circuit Court of Appeals, there are only two (2) possibilities: either the manual is part of the aircraft, or it is a separate product. *Caldwell*, 230 F.3d 1155, 1157 (9th Cir. 2000).

Although the reasoning of the minority of courts on this issue is more persuasive, *i.e.*, a maintenance manual is not a part for the “limitation period” in GARA or its rolling provision, this Court should grant

certiorari to clarify this important federal question and to provide uniformity to the interpretation and application of GARA, a federal statute that is entitled to “uniform nationwide application.” *Mississippi Band of Choctaw Indians*, 490 U.S. at 43 (1989).

B. The Proper Interpretation and Application of GARA Is an Important Federal Question for Review by the Supreme Court

The proper interpretation and application of GARA and its rolling provision presents important federal questions which merit scrutiny by this Court. Here, the Oklahoma Supreme Court failed to perform a correct statutory construction of GARA’s unambiguous terms and instead merely identified what it perceived as a federal policy to foster manufacturers’ rights to the detriment of accident victims and crafted a remedy which furthered this policy.

GARA’s legislative history does not substantiate Congressional favoritism for manufacturers. Rather, the GARA statute of repose was a limited measure Congress took to provide some protection to general aviation manufacturers while at the same time, preserving the rights of accident victims to seek redress for damage.

In the first House Report, the House of Representatives noted that “[t]he bill 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). The House of Representatives continued,

To relieve the burden of liability costs, while treating aircraft operators and passengers

fairly, the reported bill establishes an 18 year statute of repose. . . . If a new replacement part is involved, the 18 year period does not start running until the part is installed. . . . The Committee believes that this bill strikes a fair balance between manufacturers, consumers, and persons injured in accidents. . . . In sum, the Committee believes that the standards established by the reported bill will curb excessive liability costs, while at the same time affording fair treatment to persons injured in aircraft accidents. We believe the bill strikes a reasonable balance between the sometimes conflicting objectives of keeping the price of general aviation aircraft at an affordable level and awarding fair compensation to persons injured in general aviation accidents.

Id. In the second House Report, the House of Representatives reiterated the fairness of GARA,

The legislation attempts to strike a fair balance by providing some certainty to manufacturers, which will spur the development of new jobs, while preserving victims' right to bring suit for compensation in certain particularly compelling circumstances. In essence, the bill acknowledges that, for those general aviation aircraft and component parts in service beyond the statute of repose, any design or manufacturing defect not prevented or identified by the Federal regulatory process by then should, in most instances, have manifested itself. The bill thus makes clear that, once a general aviation aircraft or compo-

ment 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, whether by the plaintiff filing the action to recover damage or by a defendant seeking to reduce its own legal responsibility.

H.R. Rep. No. 103-525(II).

The ruling from the Supreme Court of Oklahoma creates an untenable result and one clearly not intended by GARA. The Supreme Court of Oklahoma's decision is particularly dangerous because a maintenance manual is prepared specifically to keep aircraft air-worthy for their useful lives and to extend the useful lives of aircraft. General aviation aircraft over 18 years old are common in this country's airspace. The Supreme Court of Oklahoma's broad interpretation of GARA, which simply overlooks the very language of that act, expands aircraft manufacturers' shield from liability and will result in more danger not only to individuals flying general aviation aircraft but to the public at large.

Here, Congress was aware that general aviation aircraft are commonly in use more than 18 years after their first sale. *See* S. Rep. 103-202 (1993) ("Given the fact that the average piston-engine aircraft is over 27 years old and one third of the fleet is over 32 years old, the question is a matter of balancing the rights of injured parties and the rights of a manufacturer.").

It is reasonable that Congress would act to relieve manufacturers from liability for parts of the aircraft that were in existence at its first sale but renewed the limitation period for new parts. It is also sensible that Congress would not relieve manufacturers of liability for negligence in preparing or maintaining maintenance manuals whose very purpose are to extend the use of an aircraft beyond 18 years and to keep the aircraft in airworthy condition while in use. It certainly would be wise for Congress to require manufacturers to exercise reasonable care to correct or update maintenance manuals particularly where, as in this case, the manufacturer learns of mistake or error in the manual and adds a part to a subassembly. The best evidence of Congress' intent in this regard is the very language of GARA.

Without question, Congress could have included "maintenance manuals and other instructive guides" (or similar language) in GARA where "limitation period" is defined. GARA, a relatively simple and short act, is not vague. The Supreme Court of Oklahoma erred by reading maintenance manuals (or their equivalent) into GARA and in doing so, created an anomaly by which manufacturers could be held liable for a "new" part added to an aircraft but not for a revised manual which erroneously instructs mechanics how to install such new part.

The U.S. Department of Transportation Federal Aviation Administration has placed an ongoing obligation upon aircraft manufacturers to report any failure, malfunction, or defect in any product or article manufactured by it that resulted in, among other things, fires caused by a system or equipment failure, malfunction, or defect; or flammable fluid leakage in

areas where an ignition source normally exists.¹⁴ C.F.R. § 21.3(a)-(c). Through Advisory Circulars, it has also observed that new materials and fabrication methods not used on older aircraft are being installed on today's aircraft, and further recognized that maintenance practices and requirements are not static and may change as information is developed during the service life of an aircraft. Therefore, owners and operators of aircraft should find the information contained in manufacturers' maintenance manuals an invaluable source of data on meeting the requirements for servicing, repairing, and maintaining aircraft, and should make allowances for such changes. AC No: 20-77B, *Use of Manufacturer's Maintenance Manuals*, 1/4/16. The Oklahoma Supreme Court, and other courts providing blanket immunity to aircraft manufacturers for maintenance manuals published over 18 years before an accident or injury, are ruling in a manner that is contrary to the regulatory requirements imposed by the FAA and the Code of Federal Regulations.



CONCLUSION

In the thirty years since GARA was enacted, this Court has been asked to accept certiorari of several cases involving GARA, including those presenting the very issue for appeal in this case: is a manual prepared by an aircraft manufacturer an aircraft or a component, system, subassembly, and other part of such aircraft for the purposes of the limitation period of GARA. To date, the Court has declined to accept the invitations to address GARA and the status of manuals. The consequence of the Court's silence in this regard

has led to direct conflicts in decisions by United States court of appeals and state courts of last resort and a hodge podge of decisions from lower courts.

The decisions finding manuals are not a “part” of an aircraft for the purposes of GARA but nonetheless finding the limitation period of GARA applicable to such manuals and the decisions finding manuals are a “part” of an aircraft subject to the limitation period of GARA create an untenable situation in general aviation and one not intended by Congress. The vast majority of general aviation aircraft remain in service beyond the eighteen-year GARA limitation period. Competent maintenance of such aircraft is essential to their airworthiness as they age. Maintenance manuals are an FAA-mandated, essential part of the competent maintenance essential to aging aircraft airworthiness. Congress specifically did not include maintenance manuals in the limitation period of GARA because those manuals are indispensable in keeping aircraft safe for use in the general public.

The decisions absolving manufacturers of responsibility for maintenance manuals judicially alter the balance struck by Congress between eliminating manufacturer liability under products liability law (defective design, defective manufacture and failure to warn) after eighteen years and the need to protect the public from aircraft which are not airworthy because of mistakes in the maintenance manual which cause or contribute to incorrect maintenance practices. In this case, the evidence is that Cessna knew its maintenance manual was incorrect but did not revise it to instruct mechanics in the correct procedure and parts to use when installing the hydraulic power pack for the land gear of the Cessna model 172RG. Manufacturers should

not be exempt from the responsibility of correcting erroneous maintenance instructions when they learn of the same even if the discovery occurs eighteen years after the aircraft at issue was sold.

This case presents a perfect opportunity for the Court to clarify GARA, resolve the conflicting conclusions by both federal and state courts concerning the interpretation of GARA, purge the judicial legislation in these conflicting cases where the courts have expanded GARA beyond its clearly expressed terms and restore the balance implemented by Congress between a manufacturer's immunity from products liability claims and its responsibility for the airworthiness of aircraft designed to remain in service beyond the limitations period for products liability claims.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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