No. 23-1305

IN THE

Supreme Court of the United States

JADE SCHIEWE, *et al.*,

Petitioners,

v.

CESSNA AIRCRAFT COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF OKLAHOMA

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

JAMES K. SECREST, II,
OBA #8049
(Counsel of Record)
JAMES K. SECREST, III,
OBA #18828
EDWARD J. MAIN,
OBA #11912
SECREST, HILL,
BUTLER & SECREST
7134 South Yale
Suite 900
Tulsa, OK 74136
jsecrest@secresthill.com
jsecrest3@secresthill.com
emain@secresthill.com
(918) 494-5905

MICHAEL G. JONES, OBA #18506
MARTIN, PRINGLE, OLIVER,
WALLACE & BAUER, L.L.P.
645 East Douglas
Suite 100
Wichita, KS 67202
mgjones@martinpringle.com
(316) 265-9311

Attorneys for Respondent
Cessna Aircraft Company

116934

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the 18-year statute of repose in the General Aviation Revitalization Act of 1994 (GARA) PL-103298, August 17, 1994, 108 Stat. 1552, 49 U.S.C. §40101, note, applies to a Maintenance or Service Manual issued by the manufacturer of a general aviation aircraft in its capacity as a manufacturer?

2. Whether a Maintenance or Service Manual, issued by the manufacturer of a general aviation aircraft in its capacity as a manufacturer, must be a "part" of the aircraft in order for the 18-year statute of repose in GARA to apply to it?

3. Whether the alleged omission of an instruction in a Maintenance or Service Manual issued by the manufacturer of a general aviation aircraft in its capacity as a manufacturer, is an exception to GARA such that the 18-year statute of repose would not apply to it?

PARTIES TO THE PROCEEDINGS

Petitioners, whose names appear in the style of this case, are Jade Schiewe and Zach Pfaff, who were Plaintiffs in the District Court of Tulsa County, State of Oklahoma, and Appellants in the Oklahoma Supreme Court.

Respondent, Cessna Aircraft Company, whose name appears in the style of this case, subsequently merged into Textron Aviation Inc.; it was a Defendant in proceedings in the District Court of Tulsa County, State of Oklahoma, and Appellee in proceedings before the Oklahoma Supreme Court.

Respondent, Spartan Aviation Industries, Inc., which does not appear in the style of this case, was joined as a Defendant in the District Court of Tulsa County, State of Oklahoma, but was dismissed with prejudice in 2013, and was not a party to the appeal to the Oklahoma Supreme Court.

Eaton Corporation, which does not appear in the style of this case, was joined as a Defendant in the District Court of Tulsa County, State of Oklahoma, but was dismissed with prejudice in 2013, and was not a party to the appeal to the Oklahoma Supreme Court.

Kelly Aerospace Turbine Rotables, Inc., which does not appear in the style of this case, was a Defendant in the District Court of Tulsa County, State of Oklahoma, but was dismissed with prejudice in 2013, and was not a party to the appeal to the Oklahoma Supreme Court.

CORPORATE DISCLOSURE STATEMENT

Textron Aviation Inc. is the successor-by-merger to Respondent, Cessna Aircraft Company; Textron Aviation Inc. is a wholly owned subsidiary of Textron Inc., a publicly traded corporation.

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

CASES

Page

Page

STATUTES, RULES AND OTHER AUTHORITIES

STATEMENT OF THE CASE

As Petitioners indicate, underlying this matter is an aircraft accident occurring September 28, 2010, and involving a Cessna Model 172RG (hereinafter the "Aircraft"). There is no dispute that the Aircraft was a general aviation aircraft as that term is used in the General Aviation Revitalization Act of 1994, PL 103-298, August 17, 1994, 108 Stat. 1552, 49 U.S.C. §40101, note (hereinafter "GARA"). The Aircraft, serial no. 172RG 0258, registration no. N5145U, was manufactured in January, 1980, and sold to its first purchaser, Avico South, Ltd., on February 1, 1980. Cessna has not supplied any new component, system, subassembly, or other part for that Aircraft subsequent to its delivery to its first purchaser in February, 1980. Cessna ceased manufacturing Model 172RG Aircraft by 1986, and never resumed the manufacture of that model.

Petitioners focus on a hydraulic power pack which raises and lowers landing gear as the source of the fire involved in the accident of September 28, 2010. The cause of the fire was disputed and no finding regarding that cause was made by the District Court of Tulsa County or by the Oklahoma Supreme Court. For purposes of Petitioners' Petition for Certiorari, it is sufficient to note that a hydraulic power pack was included in the Aircraft when delivered to its first purchaser in 1980 and that Cessna never replaced or refurbished that power pack since then. Cessna last manufactured a hydraulic power pack such as that used in the Aircraft in 1988. Cessna has not included a hydraulic power pack in general aviation aircraft since the mid-1980s.

Petitioners also focus on the instructions for the removal and installation of a hydraulic power pack on Model 172RG series aircraft. Cessna issued both a Parts Catalog and a Service Manual for that model aircraft from 1980 through 1985, but the instructions for the removal and replacement of a hydraulic power pack were unchanged from 1985, at the latest, through September 28, 2010 (the date of Petitioners' accident), or for some time thereafter. While ultimately irrelevant to the legal issue at hand, it is the case, as Petitioners contend, that, by 1985, the Parts Catalog showed a covering to be placed on the terminal lug of the hydraulic power pack, although the Service Manual did not contain instructions addressing the installation of that terminal cap. Nevertheless, those portions of both the Parts Catalog and the Service Manual remained unchanged from 1985, at the latest, through the date of the accident upon which Petitioners' claim is based.

Accordingly, the Aircraft had been manufactured and sold to its first customer over 30 years prior to September 28, 2010, and the relevant portions of both the Parts Catalog and the Service Manual remained unchanged for 25 years through the date of Petitioners' accident.

REASONS FOR DENYING A WRIT

I. Petitioners Do Not Raise An Issue Warranting Review On Certiorari

The Rules of this Court provide examples of the kinds of questions this Court might consider as warranting certiorari review. However, Petitioners do not raise such a question. This Court's Rule states:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Rule 10. Considerations Governing Review on Certiorari, pp. 5-6. The first consideration is inapplicable; Petitioners do not seek review of a decision of a United States court of appeals. Rule 10(a).

The second consideration is also inapplicable, but it exposes why certiorari review is unwarranted in the present case. Petitioners do seek review of an opinion of "a state court of last resort", that is, the Oklahoma Supreme Court, but that opinion does not "conflict[ ] with the decision of another state court of last resort or of a United States Court of Appeals", Petitioners recognize that "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." Petition for Certiorari, p. 13 (citations omitted). This "majority" rule supports Cessna's position in this matter. Petitioners state "a minority of courts" have taken a position which Petitioners endorse, citing only two aberrant decisions: *Scott v. MD Helicopters, Inc.*, 834 F.Supp.2d 1334 (M.D. Fla., 2011) and *Rogers v. Bell Helicopter Textron, Inc.*, 185 Cal.App. 4th 1403, 112 Cal. Rptr.3d 1 (2010). Petition for Certiorari, p. 13. *Scott* is not a decision of a United States court of appeals, but one of a district court, and *Rogers* is not an opinion of a "state court of last resort" but of an intermediate state appellate court. These isolated holdings might be better described as a "minimal" position.

The "consideration" in Rule 10(c) is also inapplicable. Petitioners do not suggest that the Oklahoma Supreme Court's Opinion "conflicts with relevant decisions of this Court" nor is there any reason for this Court to address GARA as interpreted by the overwhelming majority of cases considering the issue, which might best be called the "maximal" rule. "GARA, a relatively simple and short act, is not vague." Petition for Certiorari, p. 19. Petitioners admit:

> 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. . . .

Petition for Certiorari, p. 20. There is no reason for this Court to accept certiorari this time.

The facts are undisputed; GARA has been properly stated by the Oklahoma Supreme Court. At most, Petitioners (mistakenly) argue a "misapplication" of GARA, and request this Court to accept the position of only two extreme outlier holdings.

II. Whether Cessna's Maintenance Manual Was A "Part" Is Irrelevant To The Application Of GARA In The Present Case

The GARA statute of repose may apply in two ways. First, the period of repose is measured from the date an aircraft is sold and protects the manufacturer "in its capacity as a manufacturer" 18-years afterwards. Second, GARA also has a "rolling" provision which is measured

from the date a new part or component is installed in the aircraft. Only the basic principle is at issue in this case; the "rolling" provision is inapplicable.

The text of GARA may be broken down to illustrate this distinction:

> [N]o civil action for damages or 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 - . . . after the applicable limitation period. . . .

GARA, Sec.2(a). "[T]he term 'limitation period' means 18 years with respect to general aviation aircraft and the components, systems, subassemblies, and other parts of such aircraft;. . . ." GARA, Sec.3(3). The only function of Section 3(3) is to define "limitation period" as 18 years both for "general aviation aircraft" (calculated from the date of sale) as well as for "components, systems, subassemblies, and other parts" (calculated from the date of installation). Section 3(3) does not limit or alter how that "limitation period" applies to a "manufacturer . . . in its capacity as a manufacturer" under Section 2(a). Petitioners' suggestion that Section 3(3) would need to be

revised to support Cessna's protection under Section 2(a) is misguided. Petition for Certiorari, p. 19.

Whether an item is a "new component, system, subassembly, or other part of the aircraft" is only relevant to the "rolling" provision although the manufacturer of the new "part" is also protected "in its capacity as a manufacturer. . . ." Because Cessna did not provide "any new component, system, subassembly, or other part of the aircraft" after it was delivered to its first purchaser on February 1, 1980, the so-called "rolling" provision is inapplicable.

The only question is whether Cessna published its maintenance manual for the Aircraft "in its capacity as a manufacturer", which Petitioners do not appear to contest. Instead, Petitioners would have this Court ignore the phrase "in its capacity as a manufacturer", but Congress clearly intended that phrase to have some meaning:

> The latter limitation [i.e., on suits brought against a manufacturer in its capacity as a manufacturer] is intended to ensure that parties who happen to be manufacturers of an aircraft or a component part are not immunized from liability they may be subject to in some other capacity. For example, in the event a party who happened to be a manufacturer committed some negligent act as a mechanic of an aircraft or as a pilot, and such act was a proximate cause of an accident, the victims would not be barred from bringing a civil suit for damages against that party in its capacity as a mechanic.

Crouch v. Honeywell International, Inc., 720 F.3d 333, 340 (6th Cir., 2013), quoting H.R. Rep. 103-525(II), *reprinted in* 1994 U.S.C.C.A.N. 164, (Section by Section Analysis) (June 24, 1994) (bracketed material added by court). The Sixth Circuit then noted:

> The manufacturer who *chooses* to also conduct business as a mechanic is different than a manufacturer who is *required* by federal regulation to publish maintenance and overhaul manuals for all products that it manufactures.
>
> Further support for the proposition that publication of a maintenance or overhaul manual is action taken in the "capacity as a manufacturer" is derived from the plain language of GARA itself. One of the exceptions to the operation of the period of repose, GARA § 2(b)(1), pertains to claims resulting from a manufacturer's duty to disclose pertinent information, such as maintenance issues affecting airworthiness, to the FAA. Disclosure of such information is required and withholding or misrepresentation of such information may expose the manufacturer to liability under § 2(b)(1) notwithstanding the otherwise applicable period of repose. If Congress did not view a manufacturer's duty to publish and update maintenance manuals as falling within its "capacity as a manufacturer", then there would arguably have been no need for Congress to include §2(b)(1) as an exception.

Crouch v. Honeywell, 720 F.3d at 340-341 (italics original).

In the present case, Cessna published its maintenance manual in its capacity as a manufacturer, and Petitioners do not suggest otherwise.

In sum, the basic GARA 18-year period of repose runs from the date of the Aircraft's delivery on February 1, 1980; Petitioners' claim against Cessna is barred and there is no reason for this Court to look further.

III. GARA Precludes Petitioners' Claim From Arising

The GARA statute of repose prevents a claim from arising against a manufacturer, acting in its "capacity as a manufacturer", 18 years after a general aviation aircraft was delivered to its first purchaser, lessee or distributor (or "new part" installed). Cessna's Aircraft was sold to its first purchaser February 1, 1980; GARA barred a claim based on that aircraft 18 years later, or by February 1, 1998. Cessna issued its Maintenance or Service Manual for the Aircraft in its "capacity as a manufacturer" and last revised it no later than 1985. Petitioners' "civil action" is based upon an accident occurring September 28, 2010, 12 years after GARA barred their "civil action" based on the manufacture and delivery of the Aircraft,. Therefore, no "civil action" arose in favor of the Petitioners based upon the accident of September 28, 2010.

GARA, as a statute of repose, prevents a "civil action" from arising after the period of repose has elapsed. However, GARA does not itself create a "civil action"; that will depend entirely upon the law invoked by Petitioners when they commenced the underlying action.

Petitioners, who were residents of the State of Oklahoma, brought their action in a district court of

the State of Oklahoma, based upon an aircraft accident occurring in the State of Oklahoma. Accordingly, the nature of a "civil action" available to them, for purposes of the GARA statute of repose, will depend upon the law of the State of Oklahoma, which adheres to a "transactional" definition of a cause of action: the underlying circumstances determine the cause of action, although alternative theories of liability might be applicable to the claim. *See*, *Chandler v. Denton*, 1987 OK 38, ¶12, 741 P.2d 855, 862-863. The particular name or label a party might assign to its claim is not controlling:

> The character of an action is determined by the nature of the issues made by the pleadings and the rights and remedies of the parties, and not alone by the form in which the action is brought or by the prayer for relief.

Wilson v. Harlow, 1993 OK 98, ¶25, 860 P.2d 793, 800 (citations omitted); *see*, *Arvest Bank v. Spirit Bank*, 2008 OK CIV APP 55, ¶20, 191 P.3d 1228, 1233. This Court recognizes the same principle:

> Suits involve the same claim (or "cause of action") when they arise from the same transaction, or involve a common nucleus of operative facts.

Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc., 590 U.S. 405, 412 (2020) (some internal quotation marks and bracketing omitted), citing *United States v. Tohono O'Odham Nation*, 563 U.S. 307, 316 (2011); *Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 482, n. 22 (1982); Restatement (2nd) of Judgments, §24, comment b, p. 199.

In the present matter, Petitioners contend their "claim alleg[ed] negligence in the preparation and maintenance of the maintenance manual for the subject aircraft", and try to distinguish their "claims . . . based on simple negligence", from "a products liability claim", a claim "the design of the Model 172RG was defective", a claim of "any defect in the manufacture of the Model 172RG", and a claim that "Cessna failed to warn them of any defect or the potential for the landing gear assembly to catch fire during operation." Petition for Certiorari, pp. 5, 6, 7. Petitioners do not explain why the GARA statute of repose would not bar a claim labeled "negligence" although it would bar claims under any alternative theory, and indeed uses the clear phrase "no civil action" in barring all types of claims that qualify. In particular, the case law is uniform that the GARA statute of repose will bar a claim for "failure to warn" and Petitioners' "negligence" label is merely another name for the same set of underlying circumstances, and will necessarily be barred by the statute of repose as well.

For example, the Sixth Circuit held that claims for "negligence in the publication of the manual" triggered application of GARA and protected the manufacturer. *Crouch v. Honeywell*, *supra*, 720 F.3d at 339. The court stated:

> The plaintiffs do not point to any portion of the manual that contained the *wrong* instructions for the overhaul, nor do they point to any previously existing warning that was negligently deleted. Rather, their entire claim vis a vis the manual rests on their claim that the manual, and subsequent service bulletins, failed to provide any warning that the magneto

> assembly in Crouch's plane might come loose. This is precisely the sort of action that GARA forbids.

Crouch v. Honeywell, 720 F.3d at 341 (italics original; quoting District Court ruling). The Sixth Circuit then held:

> Furthermore, the duty of a manufacturer to publish and update manuals derives from its manufacturing of the original aircraft or part. GARA specifically bars lawsuits arising out of defects in an aircraft part that is more than eighteen years old. This bar logically includes suits for a failure to warn about latent defects in such parts. If claims for negligently *failing* to warn in manual revisions were not barred by GARA's period of repose, plaintiffs could artfully plead suits arising out of design defects as "failure to warn" claims, thereby defeating Congress's intent. *See Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1088 (9th Cir.2001) (rejecting notion that failure to warn of a newly perceived problem in revised manual is analogous to a replacement part triggering new period of repose); *Mason [v. Schweizer Aircraft Corp.]*, 653 N.W.2d [543,] at 552–53 [(Iowa, 2002)] (same).
>
> . . . .
>
> . . . Rather, their theory is that a needed substantive alteration was *not* included. Plaintiffs find themselves in the awkward position of arguing that an *omission*, something

> that does not exist, should be treated as something that does exist and was added on as a replacement "part of the aircraft." Plaintiffs ask the court to treat something that was not added as though it were something that was added and as though this fictional something caused the crash.

Crouch v. Honeywell, 720 F.3d at 342-343 (italics original; footnote omitted); *see*, *Quinn v. Avco Corporation*, 2022 WL 621610 (D. Dela., Mar. 3, 2022); *Theobald v. Piper Aircraft, Inc.*, 309 F.Supp.3d 1253, 1267 (S.D. Fla., Mar. 30, 2018); *Agape Flights v. Covington Aircraft Engines*, 2011 WL 2560281 (E.D. Okla., June 28, 2011); *Robinson v. Hartzell Propeller, Inc.*, 326 F.Supp.2d 631, 661 (E.D. Pa. 2004); *Alter v. Bell Helicopter Textron*, 944 F.Supp. 531, 539-540 (S.D. Tex., 1996); *Burton v. Twin Commander Aircraft*, 254 P.3d 778 (Wash., 2011); *Lunn v. Continental Motors, Inc.*, Appeal No. 119,394 (Okla. Ct. Civ. App., Mar. 4, 2022); *Lunn v. Hawker Beechcraft Corp.*, 2018 OK CIV APP 12, ¶¶16 & 20, 417 P.3d 1206, 1211, 2012; *Estate of Grochowske v. Romey*, 813 N.W.2d 687, 696-697 (Wis. App. 2012); *Inmon v. Air Tractor*, 2011 WL 5061345, *3 (Fla. App. 4 Dist., 2011); *South Side Trust & Savings Bank of Peoria v. Mitsubishi Heavy Industries, Ltd.*, 927 N.E.2d 179, 196-197 (Ill. App. 2020); *Fletcher v. Cessna Aircraft Co.*, 412 N.J. Super. 530, 538, 991 A.2d 859, 862 (App. Div., 2010); *Moyer v. Teledyne Continental Motors*, 2009 PA Super 124, ¶9, 979 A.2d 336, 344; *Burroughs v. Precision Airmotive Corp.*, 78 Cal.App.4th 681, 694, 699-702, 93 Cal.Rptr.2d 124, 133-134, 138-139 (2000); *see also*, *Butchkosky v. Enstrom Helicopter Corp.*, 855 F.Supp. 1251, 1257 (S.D. Fla., 1993) (a pre-GARA opinion decided under a state statute of repose but cited in many cases discussing GARA).

An overwhelming number of cases in addition to those cited above, demonstrate that Petitioners do not have a claim against Cessna which will survive the GARA statute of repose. Petitioners describe their claim as "negligence in failing to correct an erroneous provision of a maintenance manual", "fail[ure] to update or annotate the Cessna Model 172RG service manual", and "negligent failure to update or annotate the official service manual" and "negligence in preparation and maintenance of the maintenance manual for the subject aircraft" all of which presume that the Cessna Maintenance or Service Manual was issued by Cessna "in its capacity as a manufacturer", from which it follows that any claim based upon it is barred by the 18-year period of repose under GARA. Petition for Certiorari, pp. i, 4, 5, 8. The Oklahoma Supreme Court correctly recognized that the GARA statute of repose is a complete bar to Petitioners' claim against Cessna, regardless of how they try to phrase it or the label they try to affix to it. Petitioners' Petition for Certiorari must be denied.

CONCLUSION

WHEREFORE, premises considered, the Respondent, Cessna Aircraft Co., subsequently merged into Textron Aviation, Inc., prays this Court to deny Petitioners' Petition for Writ of Certiorari. The District Court of Tulsa County, State of Oklahoma, correctly entered summary judgment holding that Petitioners' action was barred by the 18-year statute of repose in GARA, and the Oklahoma Supreme Court correctly affirmed that decision. The Aircraft involved in Petitioners' accident of September 28, 2010, was manufactured and delivered to its first owner on February 1, 1980, 30 years prior to the

date of the accident. Clearly, the 18-year period of repose in GARA barred any claim from arising long before the date of Petitioners' accident.

Respectfully submitted,

James K. Secrest, II,
OBA #8049
(Counsel of Record)
James K. Secrest, III,
OBA #18828
Edward J. Main,
OBA #11912
Secrest, Hill,
Butler & Secrest
7134 South Yale
Suite 900
Tulsa, OK 74136
jsecrest@secresthill.com
jsecrest3@secresthill.com
emain@secresthill.com
(918) 494-5905

Michael G. Jones, OBA #18506
Martin, Pringle, Oliver,
Wallace & Bauer, L.L.P.
645 East Douglas
Suite 100
Wichita, KS 67202
mgjones@martinpringle.com
(316) 265-9311

Attorneys for Respondent
Cessna Aircraft Company