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OPINION,
SUPREME COURT OF RHODE ISLAND
(JULY 29, 2026)

SUPREME COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, Individually, and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, ET AL.

v.

AVCO CORPORATION

No. 2024-144-Appeal. (PC 15-4900)

Before: SUTTELL, C.J., ROBINSON, Lynch PRATA, LONG, and INDEGLIA (ret.), JJ.

OPINION

Justice Lynch Prata, for the Court. The plaintiffs, Carol Williams, individually, and for and on behalf of the estate and the wrongful death beneficiaries of decedent Anthony David Williams, and William Gregory Young and Debra Anne Thigpen, individually, and on behalf of the estate and wrongful death beneficiaries of decedent William Clayton Young (collectively, plaintiffs), appeal from an entry of judgment in favor of the defendant, Avco Corporation (Avco or defendant).[1]

[1] Lycoming Engines is a subdivision of Avco and maintains a principal place of business in Providence, Rhode Island.

Before this Court, plaintiffs argue that the Superior Court erred in granting summary judgment under the General Aviation Revitalization Act of 1994 (GARA). For the reasons set forth in this opinion, we affirm the judgment of the Superior Court.

Facts and Travel

On November 13, 2012, Anthony David Williams and William Clayton Young (decedents) boarded a Piper PA-32-300 Cherokee 6 Aircraft (the aircraft) which was piloted by John Tilton, Jr. Shortly after takeoff, one of the occupants communicated to air traffic control that the aircraft was experiencing an engine problem. Tragically, the aircraft crashed, and all aboard were fatally injured.

The aircraft was powered by a single Lycoming IO-540-K1A5 engine (the engine), which was designed by Avco in the 1960s and approved by the Federal Aviation Administration (FAA) in March 1966. Avco manufactured and shipped the engine to Piper Aircraft Corporation (Piper) in October 1972. Thereafter, Piper installed the engine in the aircraft and put it into service. In 1983, the engine was first overhauled by Florida Aircraft Engines.[2] As part of the overhaul,

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[2] An engine overhaul consists of deconstructing the current engine by an authorized facility that can inspect, test, and repair the engine as necessary. Lycoming requires the subject engine to be overhauled after 2,000-2,200 hours of operation or twelve years of use and provides an overhaul manual to facilitate the process. In 1983, the engine received its first overhaul at 2,133 hours of operation. The engine then received its second overhaul in 2004 at 3,634 hours of operation. At the time of the accident, the engine had accumulated approximately 817 additional hours of operation since the 2004 overhaul.

Florida Aircraft Engines sent the flow divider[3] to Quality Aircraft Carburetors, Inc. (Quality Aircraft). Quality Aircraft's reported service tag indicated that the flow divider was manufactured by Bendix, a corporation unrelated to defendant, and that its part serial number was 961N. Later, in 2004, Mena Aircraft Engines, Inc. overhauled the engine's flow divider. Mena Aircraft Engines, Inc. outsourced the work on the flow divider to Mike's Aircraft Fuel Metering Service (Mike's Fuel Metering). Mike's Fuel Metering's reported service tag also recorded that the flow divider's manufacturer was Bendix and that its serial number was 961N. In May 2009, Superior Pallet Co. purchased the aircraft.

On November 6, 2015, plaintiffs filed their initial complaint in Providence County Superior Court and asserted claims against Avco for strict liability (count I), negligence (count II), breach of express and implied warranties (count III), and negligent infliction of emotional distress (count IV). Avco answered and asserted applicable defenses under GARA, a federal statute of repose that bars suits against aircraft manufacturers after eighteen years, subject to certain enumerated exceptions.[4] In response, plaintiffs filed

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[3] A flow divider sits on top of the engine and distributes metered fuel that the servo sends to each of the six cylinders. It consists of a valve body and several internal sub-components including a plunger valve, a spring, and a flexible diaphragm. The diaphragm separates the air side from the fuel side of the flow divider to regulate fuel pressure.

[4] The plaintiffs pursued similar litigation in Mississippi against other defendants not named in this case. Additionally, there are related actions in Mississippi brought by other plaintiffs.

an amended complaint indicating that they intended to rely on exceptions set forth in GARA.[5]

Thereafter, the parties filed discovery motions, and a hearing was held on the issue.[6] On July 8, 2021, the trial justice issued a decision summarizing what transpired at the hearing and his rulings on the motions. Regarding discovery on plaintiffs' theory of liability under GARA's misrepresentation exception, the trial justice found that "[p]laintiffs must, from the outset, meet the pleading requirement under GARA to properly invoke the [f]raud exception."[7] Thus,

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[5] For our purposes, GARA, as a statute of repose, is subject to two exceptions: (1) a misrepresentation exception and (2) a rolling provision/ "new parts" exception. To overcome GARA, the former requires a claimant to show that a general aircraft manufacturer knowingly misrepresented, concealed, or withheld from the FAA, "required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered[.]" General Aviation Revitalization Act of 1994 (GARA), Pub. L. No. 103-298, 108 Stat. 1552, 49 U.S.C. § 40101 note. The latter requires a claimant to prove that (1) a new part was added to, or replaced an original part on the aircraft within eighteen years prior to the injury, (2) the defendant manufactured the new part, and (3) the new part caused the injury. *See id.*

[6] The two discovery motions before the court were (1) plaintiffs' motion to strike objections to production made by Avco and to compel Avco to provide responses and documents to plaintiffs' first request for production, and (2) Avco's motion to strike certain objections and answers to its discovery requests and to compel more responsive answers and documents. Following a hearing on the motions, both sides filed legal memoranda regarding Avco's GARA defense.

[7] Before this Court, plaintiffs argue that the trial justice misconstrued the law in interpreting § 2(b)(1) of GARA as a

according to the trial justice, plaintiffs were required to plead specific facts that showed that Avco knowingly misrepresented, concealed, or withheld required information from the FAA. The trial justice reasoned that "[b]ecause [p]laintiffs [had] failed to plead with the requisite specificity, the [f]raud [e]xception to GARA [did] not apply and [p]laintiffs [were] not now entitled to discovery." Regarding discovery pertaining to GARA's rolling provision, the trial justice accepted plaintiffs' assertion that the aircraft was equipped with a Lycoming IO-540-K1A5 engine, and that, according to plaintiffs, the accident was caused by the failure of said engine. Accordingly, the trial justice limited the scope of discovery to documents related to four parts that plaintiffs alleged contributed to the engine failure: (1) the plunger in the flow divider of the fuel system; (2) lack of an overboard line; (3) the fuel servo bellows; and (4) exhaust valves four and six.

Subsequently, the parties engaged in discovery, and Avco moved for partial summary judgment on all counts of plaintiffs' amended complaint to the extent that plaintiffs' theories of liability were based on (1) cracked fuel servo bellows; (2) a loose plunger in the flow divider; and (3) lack of an overboard line. The trial justice heard arguments on November 14 and 15, 2023, and determined that plaintiffs' claims were barred by GARA.[8] As a result, the trial justice granted

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"fraud" standard as opposed to a misrepresentation standard. While we address plaintiffs' argument later in our opinion, we note that, although the trial justice used the term "fraud" in analyzing § 2(b)(1), he applied the appropriate standard for misrepresentation under GARA.

[8] In his decision granting partial summary judgment, the trial justice found that because he determined that plaintiffs did not

Avco's motion for partial summary judgment on all three parts.

Avco then moved for summary judgment on the remaining counts of plaintiffs' amended complaint, and arguments were heard on December 6, 2023. During argument, plaintiffs implied that their claims relating to the engine's fuel line and fuel hose, in addition to the remaining exhaust valves, were not barred under GARA's rolling provision. The plaintiffs purported that the fuel line, fuel hose, and exhaust valves four and six were all replaced within the eighteen-year period prior to the accident, bore Lycoming part numbers, and were defective, leading to the accident. The trial justice disagreed, finding that plaintiffs failed to prove that Avco manufactured either the fuel line or the fuel hose. Additionally, the trial justice found that plaintiffs failed to prove that either the fuel line, fuel hose, or exhaust valves were defective such that it caused the accident. Accordingly,

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meet GARA's pleading standard to properly invoke the misrepresentation exception in his earlier discovery decision and that the same issue was before the court for partial summary judgment, "the law of the case doctrine govern[ed]." Thus, he determined that granting summary judgment on the same grounds was proper without further examination of the issue. The trial justice emphasized that this Court has noted that "the purpose of the law of the case doctrine is to ensure the stability of decisions and avoid unseemly contests between judges that could result in a loss of public confidence in the judiciary." (Quoting *DiMaggio v. Tucker*, 288 A.3d 981, 986 (R.I. 2023) (brackets omitted).) Although the trial justice recognized that the "law of the case doctrine" may not apply "when a subsequent ruling can be based on an expanded record[,]" he found that "the record ha[d] not expanded between the [discovery] decision and [the partial summary judgment] motion." Therefore, the law of the case doctrine governed.

the trial justice determined that there were no issues of material fact in dispute and granted Avco's motion for summary judgment. The plaintiffs filed a timely notice of appeal to this Court.

Standard of Review

"This Court reviews a decision granting a party's motion for summary judgment *de novo*." *Paolino v. Commonwealth Engineers & Consulting, Inc.*, 318 A.3d 209, 214 (R.I. 2024) (quoting *Nissensohn v. CharterCARE Home Health Services*, 306 A.3d 1026, 1033 (R.I. 2024)). "We assess the matter from the vantage point of the trial justice, viewing the evidence in the light most favorable to the nonmoving party, and if we conclude that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law, we will affirm." *Id.* at 214-15 (quoting *Nissensohn*, 306 A.3d at 1033). "Although summary judgment is recognized as an extreme remedy, to avoid summary judgment the burden is on the nonmoving party to produce competent evidence that proves the existence of a disputed issue of material fact." *Citizens Bank, N.A. v. Palermo*, 247 A.3d 131, 133 (R.I. 2021) (deletion omitted) (quoting *Boudreau v. Automatic Temperature Controls, Inc.*, 212 A.3d 594, 598 (R.I. 2019)).

Discussion

GARA

An examination of GARA's legislative history reveals that Congress enacted the statute "in response to a serious decline in the manufacture and sale of general aviation aircraft by United States companies." H.R. Rep. No. 103-525(I) (1994). Congress determined

that a significant cause of the decline was the "tremendous increase in the industry's liability insurance costs." *Id.* Congress recognized that general aviation manufacturers were suffering from substantial financial losses due to long-tail liability claims attached to aircrafts decades after they were manufactured and sold. *See id.* Accordingly, Congress's purpose in enacting GARA was to "curb excessive liability costs, while at the same time affording fair treatment to persons injured in aircraft accidents." *Id.*

GARA establishes a statute of repose, barring product liability claims against manufacturers of general aviation aircraft and component parts brought more than eighteen years from the date the product is delivered to its first purchaser. *See* GARA, Pub. L. No. 103-298, 108 Stat. 1552, 49 U.S.C. § 40101 note. GARA provides, in relevant part:

"[Section] 2. Time Limitations on Civil Actions Against Aircraft Manufacturers.

> "(a) IN GENERAL. —Except as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as manufacturer if the accident occurred—

"(1) after the applicable limitation period[9] beginning on—

"(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

"(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or

"(2) with respect to any new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury, or damage, after the applicable limitation period beginning on the date of completion of the replacement or addition.

"(b) Exceptions. —Subsection (a) does not apply—

"(1) if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certificate or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, subassembly, or other part of an aircraft knowingly misrepresented to the Federal Aviation Administration, or concealed or withheld from the Federal Aviation Administration, required information that is material and relevant to the performance or the

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9 The statute provides that the term "limitation period" means an eighteen-year period. GARA § 3(3).

> maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered[.]" GARA § 2(a), (b).

The language of the statute, however, makes clear that GARA's protections are not absolute. *See* GARA §§ 2(a)(2), (b)(1). For our purposes, the statute provides two exceptions where GARA will not guard against liability. *See* GARA §§ 2(a)(2), (b)(1). The first is the rolling or "new parts" provision which provides that "[t]he 18-year period begins anew if the death, injury, or damage is caused by 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.'" *Caldwell v. Enstrom Helicopter Corporation*, 230 F.3d 1155, 1156 (9th Cir. 2000) (quoting GARA § 2(a)(2)). The second is the misrepresentation exception, where a manufacturer knowingly misrepresents, conceals, or withholds from the FAA "required information that is material and relevant to the performance or the maintenance or operation of [a general aviation] aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered[.]" GARA § 2(b)(1).

Misrepresentation Exception

Before this Court, plaintiffs argue that the trial justice erred in limiting the scope of discovery and denying their motion to compel production under GARA's misrepresentation exception based on the pleadings. Specifically, plaintiffs assert that, despite not being able to obtain documents concerning Avco's misrepresentation, concealment, and withholding—

given that the documents were not publicly available—their amended complaint satisfied GARA's pleading requirement. The plaintiffs also argue that, even if the amended complaint did not satisfy GARA's pleading requirement, "nothing in GARA precludes litigants from engaging in discovery relevant to [their] claims and defenses."

Conversely, Avco argues that the trial justice correctly determined that plaintiffs must first satisfy GARA's pleading standard to obtain discovery. Avco asserts that, in the amended complaint, plaintiffs failed to plead facts with the requisite specificity to invoke GARA's misrepresentation exception. Avco also argues that plaintiffs should not prevail before this Court because plaintiffs' failure to further amend their complaint in the trial court to cure the deficiency cannot be cured on appeal.

"This Court reviews questions of statutory interpretation *de novo*." *New England Property Services Group, LLC v. Vermont Mutual Insurance Company*, 331 A.3d 730, 736 (R.I. 2025) (quoting *Sosa v. City of Woonsocket*, 297 A.3d 120, 124 (R.I. 2023)). "In matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the legislature." *Id.* (quoting *Sosa*, 297 A.3d at 124). Likewise, "[i]t is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Id.* (quoting *Sosa*, 297 A.3d at 124). "It is an equally fundamental maxim of statutory construction that statutory language should not be viewed in [isolation]." *Id.* (quoting *Sosa*, 297 A.3d at 124). Therefore, "[w]hen performing our duty of statutory

interpretation, this Court considers the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections." *Id.* (quoting *Sosa*, 297 A.3d at 124).

GARA explicitly states that the eighteen-year repose period will not apply

> "if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer * * * knowingly misrepresented * * * or concealed or withheld from the [FAA], required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part * * * ." GARA § 2(b)(1) (emphasis added).

It is apparent from GARA's plain text that § 2(b)(1) establishes a requisite pleading standard to properly invoke its misrepresentation exception. *See* GARA § 2(b)(1); *see also Crouch v. Honeywell International, Inc.*, 720 F.3d 333, 344 (6th Cir. 2013) ("Plaintiffs' original complaint clearly failed to plead sufficiently specific facts to invoke the § 2(b)(1) exception."). The plaintiffs, however, do not contest that such a standard exists. Rather, they contend that the amended complaint satisfied the pleading requirement. We disagree.

An examination of plaintiffs' amended complaint shows that they merely restated the language of § 2(b)(1) in their theories of liability against Avco for negligence and breach of express and implied warranties. Paragraph 92(t) of plaintiffs' amended complaint states that Avco was negligent in "mispresenting,

concealing, and/or withholding material information from regulatory authorities of the problems with, and defects in the engine * * * ." Parallel language lies in paragraph 107(t) of the amended complaint, regarding Avco's alleged breach of warranties. This is insufficient. GARA's pleading standard required plaintiffs to provide specific facts necessary to prove that Avco knowingly misrepresented, concealed, or withheld certain information from the FAA. *See Tillman v. Raytheon Company*, 430 S.W.3d 698, 704 (Ark. 2013) ("GARA expressly provides that it is the claimant who must set out the facts to show that the fraud exception applies and must do so with specificity. * * * GARA places the burden on [plaintiff] to plead facts with specificity and to prove that the fraud exception applies."). Therefore, plaintiffs' iteration of the statute's language merely asserted as conclusory statements was inadequate to trigger the misrepresentation exception. *See McAuliffe v. Robinson Helicopter Company*, 173 F.4th 1029, 1036 (9th Cir. 2026) (holding that the plaintiffs failed to allege the misrepresentation exception with the requisite specificity because "[g]eneralized averments * * * are not enough to overcome GARA's significant obstacles"). As such, we hold that the trial justice did not err in limiting the scope of discovery relative to § 2(b)(1) on the grounds that plaintiffs' amended complaint failed to plead facts with the requisite specificity to invoke GARA's misrepresentation exception.

Additionally, plaintiffs argue that the trial justice erred in finding that GARA preempts plaintiffs' "discovery efforts" which, they argue, is contrary to Rule 26 of the Superior Court Rules of Civil Procedure. The plaintiffs assert that the trial justice's failure to

correctly apply Rhode Island discovery rules denied plaintiffs the ability to gather the necessary information to prove misrepresentation. The plaintiffs' argument is without merit.

"While we review the scope of Rule 26 of the Superior Court Rules of Civil Procedure *de novo*, a trial justice has 'broad discretion' in granting or denying discovery motions, and 'this Court will not disturb that discretion save for an abuse' of it." *Mile v. Kirkbrae Country Club*, 331 A.3d 1003, 1006 (R.I. 2025) (brackets and deletion omitted) (quoting *State v. Lead Industries Association, Inc.*, 64 A.3d 1183, 1191 (R.I. 2013)). "'If legally competent evidence exists to support the trial justice's determination, we will affirm it' unless errors have so 'infected the validity of the proceedings as to warrant reversal.'" *Id.* (brackets omitted) (quoting *Pastore v. Samson*, 900 A.2d 1067, 1073-74 (R.I. 2006)).

Indeed, there is no dispute that GARA was enacted as a statute of repose to preclude product liability claims against general aviation manufacturers. The plaintiffs, however, assert that the trial justice erred in requiring them to "plead and prove '[f]raud on the FAA' as a prerequisite to discovery[,]" but plaintiffs are mistaken. The trial justice properly applied GARA, which requires a more demanding pleading standard and does not disturb Rule 26.

Notwithstanding our generalized pleading standard, the plaintiffs failed to satisfy GARA's more demanding pleading standard. The amended complaint did not identify one instance where Avco either misrepresented relevant information to the FAA or failed to disclose such information. While plaintiffs assert that Avco was on notice of similar IO-540

engine accidents and thus was aware of a defect in the engine model, plaintiffs do not point to any specific evidence to show that Avco mispresented, concealed, or withheld such information from the FAA and/or that Avco's misrepresentation caused the subject accident. *See McAuliffe*, 173 F.4th at 1036 ("The complaint also fails to explain how the alleged misrepresentations were 'material and relevant' to the performance, maintenance, or operation of the [component part], or any other part of the [aircraft] and critically omits any specific allegations about how any such misrepresentations are 'causally related to the harm which the [plaintiffs] allegedly suffered.'") (quoting GARA § 2(b)(1)).[10] Therefore, the trial justice properly restricted discovery pertaining to the misrepresentation exception. Accordingly, we conclude that the trial justice did not err in finding that plaintiffs were required to meet GARA's pleading requirement prior to enabling discovery.

We further reject plaintiffs' argument that the trial court erred in granting summary judgment on plaintiffs' theories of liability relative to GARA's misrepresentation exception. Because we discern no error in the trial justice's determination that plaintiffs' pleadings were insufficient to invoke § 2(b)(1), we

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[10] *See also DiLibero v. Mortgage Electronic Registration Systems, Inc.*, 108 A.3d 1013, 1016 (R.I. 2015) (noting that when a trial justice examines a plaintiff's complaint in deciding a motion to dismiss, "allegations that are more in the nature of legal conclusions rather than factual assertions are not necessarily assumed to be true") (emphasis omitted) (quoting *Doe ex rel. His Parents and Natural Guardians v. East Greenwich School Department*, 899 A.2d 1258, 1262 n.2 (R.I. 2006)).

conclude that the resulting grant of summary judgment was proper.

Rolling Provision/ "New Parts" Exception

The plaintiffs argue that the trial court erred in granting summary judgment on plaintiffs' theories of liability related to GARA's rolling provision. The plaintiffs contend that while Avco did not physically make the parts replaced during the engine's 2004 overhaul, the parts were specified by Lycoming for the engine model at issue and bore Lycoming serial numbers.

In opposition, Avco argues that plaintiffs conducted extensive discovery yet failed to prove that GARA's rolling provision applied to the present case. Avco argues that plaintiffs "had a full and fair opportunity to conduct discovery for purposes of determining whether any part manufactured by Avco was installed within 18 years of the accident and whether any such part caused the accident." Avco also asserts that "[p]laintiffs participated in at least five wreckage inspections in their search for a part that would trigger GARA's new parts exception against Avco. But [p]laintiffs never unearthed any such part." Given that plaintiffs failed to establish a part that invoked GARA's rolling provision, argues Avco, the trial justice did not err in granting its motion for summary judgment as to this exception.

To satisfy GARA's rolling provision, a plaintiff must prove that (1) a new part was added to, or replaced an original part on the aircraft within eighteen years preceding the injury, (2) the defendant manufactured the new part, and (3) the new part caused the injury. *See* GARA § 2(a)(2); *McAuliffe*, 173

F.4th at 1035 ("[T]he rolling provision only restarts the repose period where the '[new] part which replaced another component, system, subassembly * * * is alleged to have caused death, injury, or damage.'") (quoting GARA § 2(a)(2)). If plaintiff successfully meets this burden, then the eighteen-year limitation period, for which liability claims may be brought against the manufacturer of such a part, restarts and GARA does not apply. *See* GARA § 2(a)(2).

In the instant case, during the discovery stage, the trial justice determined that "because the [n]ew [p]arts [e]xception does not require [p]laintiffs to satisfy a pleading standard like in the [f]raud [e]xception, [the] [c]ourt may find that they are entitled to discover, in part, the requested documents in order to determine whether the [exception] applies." Accordingly, the trial justice limited the scope of discovery to four parts identified by plaintiffs, allowing them to determine whether any such part contributed to the engine failure. The parts were: (1) the plunger in the flow divider of the fuel system; (2) the lack of an overboard line; (3) the fuel servo bellows; and (4) exhaust valves in cylinders four and six. Subsequently, the trial justice also allowed plaintiffs to determine if either the engine's fuel hose or fuel line caused the accident.

Avco then moved for partial summary judgment as to plaintiffs' theories of liability premised on a loose plunger in the flow divider, lack of an overboard line, and cracked fuel servo bellows, which the trial justice granted. The trial justice reasoned that plaintiffs failed to prove that any of the three identified parts could overcome GARA's repose statute. The trial justice then granted summary judgment on plaintiffs' remaining theories of liability related to the exhaust

valves, fuel hose, and fuel line, grounded on a similar rationale. We discern no error in the trial justice's granting of summary judgment.

First, with respect to the fuel servo bellows, the trial justice indicated that during the hearing on Avco's motion for partial summary judgment, plaintiffs conceded that the fuel servo bellows were not the cause of the accident. Indeed, the record reveals that at the hearings on November 14 and 15, 2023, plaintiffs admitted that the fuel servo bellows were not the cause of the accident. Plaintiffs' counsel stated that "[t]he fuel servo bellows, plaintiffs' experts have, after a lot of investigation and research, have ruled that out as being causative." Given plaintiffs' clear admission, the trial justice properly granted summary judgment as to the fuel servo bellows.

Second, the trial justice determined that the plunger in the flow divider of the fuel system did not constitute a "new part" under GARA. At the outset, the trial justice considered the flow divider as consisting of three internal components: the plunger,[11] the diaphragm, and a self-locking screw.[12] With respect to

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[11] The plunger is also commonly referred to as a "plunger valve" or "valve stem."

[12] The trial justice rejected plaintiffs' contention that the replacement of the flow divider's diaphragm during the 2004 overhaul constituted a newly installed part to restart the eighteen-year limitation period under GARA. The trial justice stated that "[c]ontrary to [p]laintiff[s'] argument, it is well settled that the overhaul of an aircraft part or component does not render it 'new' for purposes of GARA." The trial justice also reasoned that none of plaintiffs' experts opined that the diaphragm was defective. The trial justice further noted that assuming *arguendo* that the diaphragm was defective, plaintiffs

the plunger valve, the trial justice found that the plunger valve and body of a flow divider are a "matched assembly." Therefore, they "cannot be purchased or replaced separately * * *." Thus, following the chronological journey of the flow divider, the trial justice found that the aircraft maintained the same flow divider for a minimum of twenty-nine years preceding the accident. We agree.

Indeed, the Overhaul Manual and Illustrated Parts List indicates, with caution to the reader, that the plunger valve and body of the flow divider are a matched assembly. Therefore, "[d]amage to either part necessitates replacement of the complete flow divider." Using the overhaul manual as guidance, we, like the trial justice, conclude that following the life span of the flow divider will be the best indicator of the life span of the plunger valve. According to the engine's logbook, the flow divider was overhauled by Quality Aircraft in the 1983 overhaul. Quality Aircraft's service tag for the repair indicated that the manufacturer of the flow divider was Bendix and recorded the part serial number as 961N. Later, during the 2004 overhaul, Mike's Fuel Metering serviced the engine's flow divider and the service tag for that repair also recorded Bendix as the manufacturer and the part serial number as 961N. Therefore, we conclude that, because the serial number on the flow divider was the same on the service tags for both the

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had not offered evidence to show that Avco manufactured that part. Rather, experts determined that a screw that was designed to secure the flow divider's diaphragm to its plunger valve was loose. Nonetheless, the trial justice determined that the screw was an original part and had not been replaced within the eighteen-year period.

1983 and 2004 overhauls—there is no evidence to suggest that the flow divider was repaired after 2004—the flow divider and, thus, the complementary plunger valve were original parts, not newly installed within eighteen years preceding the accident.

Third, with respect to plaintiffs' theory that the lack of an overboard line caused the accident, the trial justice found that plaintiffs' theory related to a design defect as opposed to a defective new part. The trial justice stated that "[t]he absence of a design feature cannot be considered a newly installed part under GARA's Rolling Provision." As we have stated *supra*, to satisfy GARA's rolling provision, a plaintiff must prove that a new part was added to or replaced an original part on the aircraft. Therefore, we are not persuaded by plaintiffs' argument that the absence of a part fits this description given that courts have limited the scope of GARA's rolling provision to defective new parts, rather than design or failure to warn defects. *See Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1088 (9th Cir. 2001) ("[A] failure to warn is decidedly not the same as replacing a component part with a new one. It does not allow the Survivors to bypass the GARA bar."); *see also LaHaye v. Galvin Flying Service, Inc.*, 144 F. App'x 631, 633 (9th Cir. 2005) (holding that "because the allegedly defective aspect of the design had been in the marketplace for over eighteen years, it was barred by GARA's statute of repose").

Next, we consider whether the engine's fuel hose and fuel line meet the criteria of GARA's rolling provision. Regarding the fuel hose, the trial justice determined that "[d]espite the replacement of the fuel hose within eighteen years of the accident, there is no

evidence supporting [p]laintiffs' argument that Avco is the manufacturer. Instead, it is undisputed that the fuel hose was manufactured by either Stratoflex or Aeroquip." We discern no error in his determination. The record reveals that plaintiffs' accident investigation expert, Allen Fiedler (Mr. Fiedler), provided in his report that as part of the 2004 overhaul, "all engine compartment hoses were replaced." Mr. Fiedler, however, did not report or opine that the replacement fuel hoses were manufactured by Avco. Rather, in his deposition, the following colloquy took place:

> "Q. And is it fair to say then that you're not offering an opinion in this case that the engine compartment hoses that were installed were new Lycoming parts, correct?
>
> "A. I don't recognize Lycoming as the source of the fuel hoses. They're usually Stratoflex or Aeroquip.
>
> "* * *
>
> "A. Let me, let me add to that. They may have been purchased through Lycoming, but the true supplier would be Aeroquip or Stratoflex.
>
> "Q. And you don't have the ability to say one way or the other whether they were purchased through Lycoming or from another supplier, correct?
>
> "A. Yeah, correct. Without the qualification in the logbook entry, I would have no idea."

Therefore, because the trial justice found Mr. Fiedler's testimony to be credible and uncontradicted,

his conclusion that Avco was not the manufacturer of the fuel hose was determinative.

Regarding the fuel lines, Mr. Fiedler also stated in his report that as part of the 2004 overhaul, Mena Aircraft Engines "used new Lycoming parts including all six cylinder kits, [and] all six fuel injection lines * * * ." The plaintiffs sought thereby to show that Lycoming was the manufacturer of the fuel lines. However, even if plaintiffs were successful in establishing Lycoming as the manufacturer, they were unable to prove causation. In his deposition, Mr. Fiedler declined to offer his opinion as to whether there was a design or manufacturing defect with respect to any engine compartment hose. Likewise, Steven Maier, plaintiffs' accident reconstructionist testified at his deposition that he was not able to identify a known defect with respect to the fuel lines that caused or contributed to the accident. *See American Commerce Insurance Company v. Porto*, 811 A.2d 1185, 1195 (R.I. 2002) ("The traditional tort concept of proximate cause focuses on legal culpability for the accident, and whether the conduct of the alleged tortfeasor in any way produced plaintiff's injuries. 'Proximate cause in tort cases is established by showing that but for the negligence of the tortfeasor, injury to the plaintiff would not have occurred.'") (brackets omitted) (quoting *English v. Green*, 787 A.2d 1146, 1151 (R.I. 2001)). Accordingly, absent a showing of causation, plaintiffs failed to establish a claim under GARA's rolling provision as to the fuel lines. *See McAuliffe*, 173 F.4th at 1035 ("The district court appropriately imposed a causation requirement, however, as the rolling provision only restarts the repose period where the 'other part which replaced another component, system, sub-

assembly * * * is alleged to have caused * * * death, injury, or damage.' We have interpreted the causation requirement as one of proximate cause.") (quoting GARA § 2(a)(2)).

Lastly, we address the exhaust valves in cylinders four and six. The trial justice found that plaintiffs failed to establish that the exhaust valves in cylinders four and six were defective and thus, GARA's rolling provision criteria was not met. We discern no error in this finding. As mentioned *supra*, Mr. Fiedler reported that all six cylinders kits were replaced with new Lycoming parts as part of the 2004 overhaul. Nonetheless, given that none of plaintiffs' experts testified or provided in their reports of the accident that either exhaust valves in cylinders four or six were defective, the element of causation was not met. *See Caldwell*, 230 F.3d at 1158. Accordingly, absent any remaining issues in dispute, the trial justice appropriately granted summary judgment in favor of Avco.

Right to Justice and Jury Trial

Finally, plaintiffs argue that the trial court violated their right to justice under article 1, section 5 of the Rhode Island Constitution. The plaintiffs cite to this Court's decision in *State v. Almonte*, 644 A.2d 295 (R.I. 1994), to argue that "statutes prohibiting discovery violate the litigants' Right to Justice." Specifically, plaintiffs contend that the trial court's discovery orders violated their right to justice because the trial court "preclude[d] litigants from obtaining and introducing material evidence, thereby preventing litigants from effectively presenting their claims before the trier of fact." (Quoting *Bartlett v. Danti*, 503 A.2d 515, 518 (R.I. 1986).)

Article 1, section 5 of the Rhode Island Constitution requires:

> "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws."

"[T]his Court has recognized that the purpose of article 1, section 5 is to 'forbid the total denial of access to the courts for the adjudication of a recognized claim.'" *Zab v. Rhode Island Department of Corrections*, 269 A.3d 741, 748 (R.I. 2022) (brackets omitted) (quoting *Bandoni v. State*, 715 A.2d 580, 595 (R.I. 1998)). Thus, the plaintiffs' argument distorts the principle behind the right to justice. *See Zab*, 269 A.3d at 750 (holding that the civil death statute violated article 1, section 5 "because it completely deprive[d] individuals of an expressly enumerated constitutional right"—the right to gain access to the courts). It is clear from the record before us that the plaintiffs' access to the courts has not been denied or curtailed. Therefore, the plaintiffs' claims that the trial justice's ruling implicates the right to justice provision is misguided.

Conclusion

For the reasons stated herein, we affirm the Superior Court judgment. The papers in this case may be remanded thereto.

ORDER,
RHODE ISLAND SUPERIOR COURT
(FEBRUARY 1, 2024)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, Individually, and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, Deceased; and WILLIAM GREGORY YOUNG and DEBRA ANNE THIGPEN, Individually, and for and on Behalf of the Estate and Wrongful Death Beneficiaries of William Clayton Young, Deceased

v.

AVCO CORPORATION

C.A. No. PC-2015-4900

Before: Richard LICHT, Associate Justice, J.

ORDER

This matter came before the Court (Licht, J.) on December 6, 2023 on Defendant Avco Corporation's ("Avco") Motion for Summary Judgment ("Motion") and Plaintiffs' objection thereto. After briefing and argument, and for the reasons set forth in the Court's written decision of January 3, 2024, it is hereby ORDERED, ADJUDGED, and DECREED:

Avco's Motion is GRANTED.

ENTER:

/s/ Richard Licht
Associate Justice, J.

PER ORDER:

/s/ Michael C. Rampone
Deputy Clerk I

Dated: 2/1/2024

FINAL JUDGMENT,
RHODE ISLAND SUPERIOR COURT
(FEBRUARY 1, 2024)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, Individually, and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, Deceased; and WILLIAM GREGORY YOUNG and DEBRA ANNE THIGPEN, Individually, and for and on Behalf of the Estate and Wrongful Death Beneficiaries of William Clayton Young, Deceased

v.

AVCO CORPORATION

C.A. No. PC-2015-4900

Before: Richard LICHT, Associate Justice, J.

FINAL JUDGMENT

Final judgment hereby enters in favor of Defendant Avco Corporation and against Plaintiffs Carol Williams, individually and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, deceased and William Gregory Young and Debra Anne Thigpen, individually and for and on behalf of the Estate and Wrongful Death Beneficiaries of William Clayton Young, deceased.

ENTER:

/s/ Richard Licht
Associate Justice, J.

PER ORDER:

/s/ Michael C. Rampone
Deputy Clerk I

Dated: 2/1/2024

DECISION,
RHODE ISLAND SUPERIOR COURT
(JANUARY 3, 2024)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, Individually, and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, Deceased; and WILLIAM GREGORY YOUNG and DEBRA ANNE THIGPEN, Individually, and for and on Behalf of the Estate and Wrongful Death Beneficiaries of William Clayton Young, Deceased

Plaintiffs,

v.

AVCO CORPORATION

Defendant.

C.A. No. PC-2015-4900

Before: LICHT, J.

DECISION

LICHT, J. Carol Williams, individually, and for and on behalf of the estate and the wrongful death beneficiaries of Anthony David Williams, deceased, and William Gregory Young and Debra Anne Thigpen, individually, and for and on behalf of the estate and

wrongful death beneficiaries of William Clayton Young, deceased, (collectively referred to as Plaintiffs) have sued Defendant Avco Corporation (referred to as Avco or Lycoming) as a result of a tragic airplane accident which resulted in the deaths of Messrs. Williams and Young. Pursuant to Rule 56 of the Superior Court Rules of Civil Procedure, Avco moves for summary judgment as to all counts alleged against them by Plaintiffs. Plaintiffs object to Avco's motion. For the reasons stated herein, Defendant's Motion for Summary Judgment is granted.

I. Facts and Travel

On November 13, 2012, Anthony David Williams, William Clayton Young, and John Tilton, Jr. (Decedents) boarded a Piper PA-32-300 Cherokee 6 Aircraft (Aircraft) at Hawkins Field in Jackson, Mississippi to attend a Federal Aviation Administration (FAA) safety seminar in Raymond, Mississippi. (Def.'s Mot. for Summ. J. (Def.'s Mot.) Ex. 1 (NTSB Factual Report), at 1-2.) Prior to departure, the Aircraft exited its hanger, fuel was added to its main fuel tanks, and a pre-flight inspection was performed. *Id.* at 1. Shortly after takeoff, Air Traffic Control (ATC) received a message indicating that Decedents were experiencing some engine difficulties and were returning to Hawkins Field. *Id.* at 1a. The Aircraft crashed. *Id.* at 1b. It came to rest upside down on a house, approximately 0.8 nautical miles south of the departure end of Runway 16 in Jackson, Mississippi and erupted into flames and smoke. *Id.* As a result, Decedents were fatally injured due to the "inhalation of products of combustion." *Id.* The Aircraft had been in flight for less than two minutes. *See id.* at 1a.

Plaintiffs filed their initial Complaint on November 6, 2015 advancing claims for Strict Liability (Count I), Negligence (Count II), Breach of Express and Implied Warranties (Count III), and Negligent Infliction of Emotional Distress (Count IV). *See* Complaint (Compl.). Avco answered and asserted the General Aviation Revitalization Act, Pub. L. No. 103-298, 108 Stat. 1552 (codified at 49 U.S.C. § 40101) (GARA), as a defense. *See* Answer. GARA is a statute of repose and has been discussed in this Court's decision on partial summary judgment, *Williams v. Avco Corp.*, No. PC-2015-4900, 2023 WL 8359803 (R.I. Super. Nov. 28, 2023), and will be discussed below. On May 29, 2020, Plaintiffs submitted an Amended Complaint indicating that they intended to rely on the Rolling Provision and Fraud Exception set forth in GARA.[1] *See* Amended Complaint (Am. Compl.).

On July 8, 2021, this Court decided two discovery motions, one filed by each party. *See Williams v. Avco Corp.*, No. PC-2015-4900, 2021 WL 2946198 (R.I. Super. July 8, 2021). This Court held that the Fraud Exception of GARA did not apply because Plaintiffs failed to allege specific facts that show Avco knowingly misrepresented, concealed, or withheld any information from the FAA. *Id.* at *6. However, this Court noted that Plaintiffs' investigation of the accident identified four components (*e.g.*, the plunger in the flow divider of the fuel system, the lack of an

[1] The Rolling Provision will be explained in greater detail below. The Fraud Exception has been discussed in prior decisions rendered in this litigation. *See Williams v. Avco Corp.*, No. PC-20154900, 2021 WL 2946198 (R.I. Super. July 8, 2021); *see also Williams v. Avco Corp.*, No. PC-2015-4900, 2023 WL 8359803, at *2 (R.I. Super. Nov. 28, 2023).

overboard line, the fuel servo bellows, and the exhaust valves of cylinders four and six) of the engine that could have contributed to its failure. *Id.* at *3. Therefore, to the extent that Plaintiffs identified specific parts that allegedly caused the accident, Plaintiffs were allowed to conduct discovery to determine whether those parts fell under GARA's Rolling Provision. *Id.* at *7.

After the parties engaged in fact discovery, Avco moved for partial summary judgment on all counts of the Amended Complaint to the extent their theories of liability were premised on (a) cracked fuel servo bellows, (b) a loose plunger in the flow divider, and (c) a lack of an overboard line.[2] *Williams*, 2023 WL 8359803, at *2. On November 28, 2023, this Court granted Avco's Motion for Partial Summary Judgment under GARA holding that Plaintiffs' claims based on the flow divider of the fuel system—including claims related to its plunger, self-locking screw, and diaphragm—and the absence of an overboard line were all barred by GARA's statute of repose. *Id.* at *5-8.

Avco now moves for summary judgment on all remaining counts of the Amended Complaint. (Def.'s Mem. of Law in Supp. of Mot. for Summ. J. (Def.'s Mem.) 2.) Oral argument occurred on December 6, 2023.

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[2] In relation to the motion, this Court heard arguments on November 14 and 15, 2023. *Williams*, 2023 WL 8359803, at *2. During argument, Plaintiffs conceded that the fuel servo bellows were not causative of the accident. *Id.* Therefore, the only issues left for this Court to address in that motion related to the flow divider of the fuel system and the lack of an overboard line. *Id.*

A. Engine

The Aircraft was powered by a single Lycoming 10-540-K1A5 engine (the Engine) which was designed by Avco in the late 1960s and approved by the FAA on March 21, 1966. *Williams*, 2023 WL 8359803, at *2. Avco manufactured and shipped the Engine to Piper Aircraft Corporation (Piper) in Florida on October 5, 1972. *Id.* Subsequently, Piper installed the Engine on a Piper PA 32-300 Cherokee Six and put it into service. *Id.* In May 2009, Superior Pallet Co. purchased the Aircraft. (Def.'s Mot. Ex. 2 (Latham Dep.), at 24:12-20, Oct. 15, 2021.)

The Engine is equipped with an RSA 10 fuel injection system that receives fuel from the engine driven pump and is delivered to the fuel injector servo. (Def.'s Mot. Ex. 10 (Fiedler Report), at 5.) The fuel injector servo senses the mass air flow, matches the mass air flow with the appropriate amount of fuel, and then releases the fuel flow. *Id.* That fuel flow then travels through a tube that is encased with rubber, referred to as the fuel hose, and is sent to the flow divider. *Id.* This fuel flow creates pressure and activates the diaphragm within the flow divider. *Id.* The diaphragm then opens the flow divider valve allowing the fuel flow to travel through stainless steel tubes, referred to as fuel lines, into each of the six cylinders. *Id.*

II. Standard of Review

"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Cruz v. DaimlerChrysler Motors Corp.*, 66 A.3d 446, 451 (R.I. 2013) (internal quotation omitted). "[S]ummary judgment is appropriate when, viewing

the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the Court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotations omitted); *see* Super. R. Civ. P. 56. The moving party "bears the initial burden of establishing the absence of a genuine issue of fact." *McGovern v. Bank of America, NA.*, 91 A.3d 853, 858 (R.I. 2014) (citation omitted). Then the burden shifts and, as reiterated by the Rhode Island Supreme Court recently:

> "The party opposing summary judgment bears the burden of proving, by competent evidence, the existence of facts in dispute. The opposing party will not be allowed to rely upon mere allegations or denials in the pleadings but rather, by affidavits or otherwise the opposing party has an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." *Henry v. Media General Operations, Inc.*, 254 A.3d 822, 834 (R.I. 2021) (cleaned up, citations omitted).

The "'purpose of the summary judgment procedure is issue finding, not issue determination.'" *Long v. Dell, Inc.*, 93 A.3d 988, 995 (R.I. 2014) (internal quotation omitted). In deciding a motion for summary judgment, the Court "views the evidence in the light most favorable to the nonmoving party[,]" *Mruk v. Mortgage Electronic Registration Systems, Inc.*, 82 A.3d 527, 532 (R.I. 2013), and "does not pass upon the weight or the

credibility of the evidence[.]" *Palmisciano v. Burrillville Racing Association*, 603 A.2d 317, 320 (R.I. 1992).

The Rhode Island Supreme Court has held that "'[i]n Rhode Island the general rule is that negligence is a question for the jury unless the facts warrant only one conclusion.' *Dent v. PRRC, Inc.*, 184 A.3d 649, 658 (R.I. 2018) (quoting *DeNardo v. Fairmount Foundries Cranston, Inc.*, 121 R.I. 440, 448, 399 A.2d 1229, 1234 (1979)). "However, as one reflects upon that fundamental principle, it is important not to gloss over the adjective 'general' as well as the explicit 'unless' clause in the just-quoted sentence. Stated differently, the law is clear that there can be cases (exceptional perhaps, but real nonetheless) where summary judgment is appropriate even in the context of a case of alleged negligence." *Id.*

III. Analysis

A. GARA

GARA establishes a "statute of repose[3] to protect general aviation manufacturers from long-term liability in those instances where a particular aircraft has been in operation for a considerable number of years." *Altseimer v. Bell Helicopter Textron Inc.*, 919 F. Supp.

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[3] A statute of repose differs from a statute of limitations in that a statute of repose is "a legal recognition that, after an extended period of time, a 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 that much time has elapsed." *Altseimer v. Bell Helicopter Textron Inc.*, 919 F. Supp. 340, 342 (E.D. Cal. 1996).

340, 342 (E.D. Cal. 1996). In pertinent part, GARA provides that:

> "(a) In general. Except as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred—
>
> "(1) after the applicable limitation period [eighteen years] beginning on—
>
> "(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or
>
> "(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or
>
> "(2) with respect to any new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury, or damage, after the applicable limitation period [eighteen years] beginning on the date of completion of the replacement or addition." 49 U.S.C. § 40101.

However, Congress did recognize the need, in limited situations, to provide relief to potential plaintiffs

injured in aircraft accidents that involve aircraft manufacturers covered by GARA's protective provisions; therefore, it enumerated four instances where the statute of repose would not apply.[4] Relevant to this matter is the Rolling Provision.

1. The Rolling Provision

GARA is a "rolling" statute of repose. *Burroughs v. Precision Airmotive Corp.*, 78 Cal. App. 4th 681, 691 (Cal. Ct. App. 2000). Pursuant to Section (a)(2) of GARA, when any part or subassembly in a general aviation aircraft is replaced with a new part, the eighteen-year period restarts for that new part from the date it is installed. *Moore v. Hawker Beechcraft Corp.*, No. N09C-12-010MMJ, 2011 WL 6400670, at *8 (Del. Super. Ct. Dec. 15, 2011), aff'd, 74 A.3d 654 (Del. 2013). In order to rely on Section (a)(2)'s Rolling Provision, Plaintiffs must "(1) identify the new part; (2) demonstrate that the part was placed on the [s]ubject Aircraft within [eighteen] years of the accident; (3) establish that the replacement part was defective and caused Plaintiffs' injuries; and (4) establish that [Avco] manufactured the new part." *Id.*

i. The Parts in Dispute

The crux of this dispute centers on the following engine components: (a) flow divider, (b) fuel servo bellows, (c) fuel lines, (d) fuel hose, and (e) exhaust

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[4] It is important to note that exceptions two, three, and four of GARA do not apply to this matter. The second exception pertains to people injured or killed during flight for medical and other emergencies. 49 U.S.C. § 40101(b)(2). The third and fourth exceptions involve injuries and fatalities occurring to those not aboard the aircraft at the time of the accident and suits brought pursuant to a written warranty. *Id.* at (b)(3)-(4).

valves. In addition, Plaintiffs' experts have opined that the lack of an overboard line was a contributing cause to the accident. *See* Def.'s Mot. Ex. 8 (Maier Dep.), at 320:9-13, Oct. 26, 2023; *see also* Def.'s Mot. Ex. 7 (Seader Dep.), at 245:7-8, Oct. 27, 2023. As previously stated, this Court held that Plaintiffs' claims related to the flow divider, the lack of an overboard line, and the fuel servo bellows were all barred by GARA. *See Williams*, 2023 WL 8359803, at *5-8. First, as to the flow divider, this Court analyzed three of its internal components: plunger, diaphragm, and self-locking screw. *See id.* at *6-8. This Court reasoned that because "the plunger . . . and body of a flow divider cannot be purchased or replaced separately," the evidence demonstrated a "continuous presence of the same [plunger and] flow divider on the Aircraft for a minimum of twenty-nine years preceding the accident." *Id.* at *6. As to the diaphragm, this Court determined that, despite being replaced within eighteen years of the accident, Plaintiffs did not offer any evidence that Avco manufactured the part and, therefore, it fell outside of GARA's Rolling Provision. *See id.* at *5-6, 8. Moreover, the self-locking screw that was designed to adhere the flow divider's diaphragm to its plunger "was the original screw" on the Aircraft; thus, it was more than eighteen years old. *Id.* at *8.

Second, as for the lack of an overboard line, this Court reasoned that "[t]he absence of a design feature cannot be considered a newly installed part under GARA's Rolling Provision." *Id.* Instead, it is, at most, a design defect, which occurred more than fifty years before the accident. *See id.* Lastly, "[d]uring argument, Plaintiffs conceded that the fuel servo bellows were not causative of the accident," and therefore, were not

subject to dispute. *Id.* at *2. Given that Plaintiffs are precluded from advancing any theories of liability related to such components, the only issues left for this Court to address relate to the fuel lines, fuel hose, and exhaust valves.

Plaintiffs implied during oral argument, although not explicitly presented in their memorandum, that the three remaining engine components—fuel lines, fuel hose, and exhaust valves—meet the criteria of the Rolling Provision and, consequently, should not be afforded the protections of GARA. It is Plaintiffs' position that the three remaining engine components were replaced within eighteen years of the accident, bear Lycoming part numbers, and were defective, leading to the occurrence of the accident. However, this Court disagrees for several reasons.

In 2004, Mena Aircraft Engines, Inc. (Mena Aircraft Engines), as part of the overhaul, used new Lycoming replacement parts, including, but not limited to, the fuel lines. *See* Fiedler Report at 11. Although the fuel lines were replaced within eighteen years of the 'accident, the record lacks evidence establishing Avco as the manufacturer, apart from the Lycoming part number—a theory already dismissed in this Court's decision on partial summary judgment. *See generally* Def.'s Mot. Ex. 11 (Maier Report), at 24; *see also Williams*, 2023 WL 8359803, at *6 ("[T]his Court rejects Plaintiffs' argument that Avco is a 'manufacturer' simply because it assigned the flow divider a Lycoming part number."). Even further, none of Plaintiffs' experts offered an opinion that the fuel lines were defective. *See generally* Fiedler Report; Maier Report; (Def.'s Mot. Exs. 12, 13 (Seader Reports).). Rather, Plaintiffs' accident reconstructionist, Steven

Maier (Maier), addressed the allegedly defective nature of the fuel lines and stated that he "[did] not identify a known defect." Maier Dep. at 378:11-23. Plaintiffs' accident investigation expert, Allen Fiedler (Fiedler), also made it clear that he was not providing an opinion on defects related to the fuel lines in this case. (Def.'s Reply Ex. 18 (Fiedler Dep.), at 74:4-10, Nov. 13, 2023.)

Regarding the fuel hose, "[a]s part of the engine reinstallation, all engine compartment hoses were replaced" on June 29, 2004. Fiedler Report, at 13. Despite the replacement of the fuel hose within eighteen years of the accident, there is no evidence supporting Plaintiffs' argument that Avco is the manufacturer. Instead, it is undisputed that the fuel hose was manufactured by either Stratoflex or Aeroquip. Fiedler Dep. at 80:16-81:1 ("They may have been purchased through Lycoming, but the true supplier would be Aeroquip or Stratoflex."). Even so, assuming *arguendo* that Avco manufactured the part, Maier testified that "[he] [does] not have an opinion on [the fuel hose] in this case." Maier Dep. at 368:19-22. Plaintiffs' expert, Mark Seader (Seader), also testified that the fuel hose was not defective, *per se;* rather, Seader opined that the insulation "simply could have been better." Seader Dep. at 241:1-242:2. However, "[t]he fact that a design could be better is insufficient to establish a . . . defect. A manufacturer is not required to design every product in the best manner available or to guarantee that nothing will harm the consumer." *Glover v. Rousselle Corp.*, No. 01-85-01029-CV, 1986 WL 10175, at *4 (Tex. App. Aug. 28, 1986).

The last component of the engine in dispute relates to the exhaust valves in cylinders #4 and #6.

Even if Plaintiffs could establish that the exhaust valves are new Lycoming parts, Plaintiffs lack sufficient evidence to substantiate any defects in these engine components. *See* Fiedler Dep. at 73:12-20. Initially, in Maier's report, he opined that "[t]he #4 and #6 exhaust valves were found stuck in the guides during the post-crash disassembly of the engine." Maier Report, at 24. However, none of Plaintiffs' experts testified that there was a defect with the exhaust valve in cylinder #4. *See* Maier Dep. at 222:1-23, 378:24-379:3. Rather, Maier confirmed at his deposition that he did not think that exhaust valve #4 was stuck in flight "for sure" and even corrected counsel that the identified stuck valve was #6, not #4. *See id.* at 222:1-4; *see also id.* at 378:24-379:3 ("It was the No. 6, not the 4.").

In relation to the exhaust valve in cylinder #6, none of Plaintiffs' expert reports offered an opinion that this allegedly stuck valve was defective. *See generally* Fiedler Report; Maier Report; Seader Reports. Yet, during their respective depositions, each expert provided differing opinions on this engine component. Maier testified that the allegedly stuck exhaust valve in cylinder #6 "may have been intermittently sticking during the accident flight." Maier Dep. at 225:19-226:4 (emphasis added). When asked directly if Maier was opining that there was a defect with respect to the exhaust valve in cylinder #6, he stated that "it is a possible reason for the engine power issue that was noted by Mr. Tilton." *Id.* at 228:4-9 (emphasis added). Maier did not provide this opinion in his report, nor could he provide an opinion to a reasonable degree of professional certainty during his deposition that the exhaust valve in cylinder #6 was defective. *See id.* at

228:4-20. Even further, "to be admissible, an expert must testify in terms of probability and not possibility," *Ferguson v. Wayland Manor Associates*, 771 A.2d 888, 892 (R.I. 2001), so as to "'precisely . . . guard against raw speculation by the fact-finder.'" *Claiborne v. Duff*, No. PC 10-6330, 2015 WL 3936909, at *9 (R.I. Super. June 23, 2015) (quoting *Sakaria v. Trans World Airlines*, 8 F.3d 164, 172-73 (4th Cir. 1993)).

Seader testified that the allegedly stuck valve in cylinder #6 was evidence of a "relatively minor in nature" defect, so much that he "didn't even include [it] in [his] report." Seader Dep. at 328:22-329:7. Seader went on to testify, again, that he "didn't include [it] in [his] report, and there was a reason for that." *Id.* at 329:3-6. He further explained that he was "looking for the reason the plane plowed into a house." *Id.* Even assuming *arguendo* that the exhaust valve in cylinder #6 was defective, Seader affirmed on numerous occasions that the allegedly stuck valve did not cause the accident, as will be discussed in further detail below. *See* Seader Dep. at 329:13-15 ("But stuck valves is just—it's a—it's a contributing thing, but it's not what put that airplane into that house."); *id.* at 329:22-23 ("Yes. In that regard, if you had a stuck valve, you would still be able to fly your airplane."); *id.* at 330:5-7 ("I can only say what caused the accident, what caused the loss of power, was the fire."). Lastly, Fiedler testified that he was not offering an opinion in this case that there was a defect in either of the valves or the cylinders. *See* Fiedler Dep. at 132:19-24. Rather, he opined that "the signatures of non-

rotation[5] were actually caused by the soot from the ground fire" and not evidence of a defect. *Id.* at 132:22-24.

It is evident that the three remaining engine components—fuel lines, fuel hose, and exhaust valves—do not meet the criteria of the Rolling Provision and, thus, are barred by GARA. Therefore, viewing the facts and all reasonable inferences in the light most favorable to Plaintiffs, there are no issues of material fact in dispute. *See Quest Diagnostics, LL C*, 93 A.3d at 951.

B. Theories of Liability

Plaintiffs advance four theories of liability; the first three counts are contingent on the presence of proximate causation. By way of background, this Court will outline the elements for each count. However, as discussed in Part III Section (B)(i) *infra*, the absence of proximate cause alleviates the need for a prolonged analysis on Counts I, II, and III.

1. Count I: Strict Liability

The Rhode Island Supreme Court requires two elements for a party to be subjected to strict liability: "(1) 'the seller is engaged in the business of selling such a product,' and (2) the product `is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.'" *Olshansky v. Rehrig International*, 872 A.2d 282, 287 (R.I. 2005) (quoting *Ritter v. Narragansett Electric Co.*, 109 R.I. 176, 188, 283 A.2d 255, 263 (1971) (abrogated on sepa-

[5] At the hearing, defense counsel explained the significance of "non-rotation" and clarified that, generally, signatures of non-rotation may be evidence of a defect.

rate grounds)). However, in order to prevail on a strict products liability claim, a plaintiff must prove: "(1) that there was a defect in the design or construction of the product in question; (2) that the defect existed at the time the product left the hands of the defendant; (3) that the defect rendered the product unreasonably dangerous . . . ; (4) that the product was being used in a way in which it was intended at the time of the accident; and (5) that the defect was the proximate cause of the accident and [plaintiffs'] injuries.' *Sweredoski v. Alfa Laval, Inc.*, No PC 2011-1544, 2013 WL 1088826, at *3 (R.I. Super. Mar. 7, 2013) (Gibney, P.J.) (quoting *Guilbeault v. R.J. Reynolds Tobacco Co.*, 84 F. Supp. 2d 263, 267-68 (D.R.I. 2000) (emphasis added)).

2. Count II: Negligence

To succeed on a claim for negligence, "`a plaintiff must establish a legally cognizable duty owed by a defendant to a plaintiff, a breach of that duty, proximate causation between the conduct and the resulting injury, and the actual loss or damage.'" *See Mills v. State Sales, Inc.*, 824 A.2d 461, 467 (R.I. 2003) (quoting *Jenard v. Halpin*, 567 A.2d 368, 370 (R.I. 1989) (emphasis added)). "In Rhode Island, [t]he elements of a [strict products liability] claim and a negligence claim based on a product defect overlap significantly, with the negligence claim having the additional requirement that the defendant 'knew or had reason to know . . . that [the product] was defective in any manner.'" *Sweredoski*, 2013 WL 1088826, at * 4 (internal quotation omitted).

3. Count III: Breach of Warranties

"The plaintiff who claims breach of express warranty has the burden of proving that the statements or representations made by the seller induced her to purchase that product and that she relied upon such statements or representations." *Thomas v. Amway Corp.*, 488 A.2d 716, 720 (R.I. 1985). Whereas "the implied warranty is breached when a product of fair average quality does not pass in the trade and is unfit for the ordinary purpose for which it is used. . . . " *Id.* at 719. A plaintiff must prove that 'the product is defective, that it was in a defective condition at the time it left the hands of the seller, and that said defect is the proximate cause of the injury.'" *Dent*, 184 A.3d at 656 (quoting *Lariviere v. Dayton Safety Ladder Co.*, 525 A.2d 892, 896 (R.I. 1987) (emphasis added)).

i. Causation

Even if Plaintiffs were to establish that any of the three remaining engine components were placed on the Aircraft within eighteen years of the accident, demonstrate that it was a defective replacement part, and identify Avco as the manufacturer, to establish any of their theories of liability, they must, nonetheless, prove through competent expert testimony that such engine components caused the accident. *See Mills*, 824 A.2d at 468.

It is Plaintiffs' position that "the flow divider was exporting fuel overboard because the fuel was leaking through a vent hole in the air-side over the hot engine due to a loose diaphragm that was just replaced during the 2004 overhaul . . . as there was no overboard line to divert the fuel over the hot engine as exists in other model engines." (Mem. of Law in Supp.

of Pls.' Resp. in Opp'n to Mot. for Summ. J. (Pls.' Opp'n) 9.) Therefore, as a result, an in-flight fire ensued causing "the fuel to overheat, vaporize the fuel and stick the exhaust valves, ultimately shutting down the engine." *Id.* Although Avco maintains dissenting views,[6] for the purpose of summary judgment, this Court adopts Plaintiffs' in-flight fire theory.

Causation is a two-part inquiry: (1) causation in fact or actual causation and (2) proximate, legal causation. *HNY Holding Co. Inc. v. Danis Transportation Co.*, No. PB 02-6561, 2004 WL 2075158, at *4 (R.I. Super. Sept. 9, 2004) (citing *Peckham v. Continental Casualty Insurance Co.*, 895 F.2d 830, 836 (1st Cir. 1990)). When analyzing causation in fact, courts apply the "but-for" rule which provides that "`[t]he defendant's conduct is not a cause of the event, if the event would have occurred without it.' *HNY Holding Co. Inc.*, 2004 WL 2075158, at *4 (quoting *Gercey v. United States*, 409 F. Supp. 946, 954 (D.R.I. 1976)). In other words, "the 'but-for' rule asks whether 'the injury [would] have occurred were it not for the actor's conduct.'" *Id.* (quoting 57A Am. Jur. 2d Negligence § 436).

Plaintiffs argue that "[g]iven the defective condition of the Lycoming engine and its components that led to an in-flight fire, engine failure, and fatalities as a result, Defendant failed to satisfy its duties under the law from the initial certification until the accident date." Pls.' Opp'n at 18. Maier stated that "[t]he evidence that I have is consistent with that there was fuel leaking out of [the] fuel flow divider, not through

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[6] Avco contends that there was no in-flight fire, but rather, the fire occurred as a result of the crash.

a drain line overboard, which then ultimately created an in-flight fire." Maier Dep. at 320:9-13. Moreover, Maier believed that had Avco implemented an overboard line, the in-flight fire would not have occurred. *See id.* at 360:4-8. Seader also opined that "the fuel leakage from the flow divider caused the fuel lines to heat [which] result[ed] in the engine shutting down" and "if the flow divider had a vent, [the accident] wouldn't have happened." Seader Dep. at 245:7-8, 288:3-5.

The foundation of Plaintiffs' causation in fact argument and their supporting experts' testimony relies on the notion that the accident would not have occurred but for the fuel leak from the flow divider and/or the failure to install an overboard line. Stated differently, as Avco highlights:

"But for the alleged loose screw or loose diaphragm, there would not have been a leak in the flow divider, and but for the leak in the flow divider and the absence of the overboard line, there would not have been the alleged fire. And but for the alleged fire, the fuel lines would not have allegedly heated and but for the fuel lines heated by fire, the accident would not have happened." (Def.'s Hr'g Ex. A (Slide Deck), at 41, Dec. 8, 2023.)

This Court previously held that GARA precludes Plaintiffs from pursuing claims related to the flow divider—consisting of its diaphragm, self-locking screw, and plunger valve—the fuel servo bellows, and the absence of an overboard line. *See Williams*, 2023 WL 8359803, at *5-8. Consequently, because expert testimony distinctly attributes the accident to fuel leakage from the flow divider, a claim barred by GARA, it cannot be pursued or substantiated. Therefore, but for

the fuel leakage there would have been no fire, thereby preventing Plaintiffs from establishing causation in fact.

Even so, "'[a] plaintiff must not only prove that a defendant is the cause-in-fact of an injury, but also must prove that a defendant proximately caused the injury.'" *Claiborne*, 2015 WL 3936909, at *9 (quoting *Sweredoski v. Alfa Laval, Inc.*, No. PC 2011-1544, 2013 WL 3010419 (R.I. Super. June 13, 2013) (Gibney, P.J.)). "To prove proximate cause, a plaintiff must establish `that the injury claimed was a direct or foreseeable result of the defendant's negligence.'" *HNY Holding Co. Inc.*, 2004 WL 2075158, at *5 (quoting *Doe v. United States*, 737 F. Supp. 155, 161 (D.R.I. 1990)). Despite the permissibility of inferences, causation "'must be established by competent evidence and may not be based on conjecture or speculation.'" *Id.* (quoting *Martinelli v. Hopkins*, 787 A.2d 1158, 1169 (R.I. 2001)).

Furthermore, "expert testimony is required to establish any matter that is not obvious to a lay person and thus lies beyond common knowledge." *Mills*, 824 A.2d at 468. "It is well settled in [Rhode Island] that when expert . . . testimony is offered to establish a causal relationship between a defendant's act or omission and the plaintiff's injury, 'such testimony must speak in terms of 'probabilities' rather than 'possibilities.'" *Gray v. Stillman White Co. Inc.*, 522 A.2d 737, 741 (R.I. 1987) (quoting *Parrillo v. F. W. Woolworth Co.*, 518 A.2d 354, 355-56 (R.I. 1986)).

Plaintiffs' experts, during their depositions and reports, used the terms fuel line and fuel hose

interchangeably.[7] However, as explained in Part I, Section A, *supra*, the fuel lines and fuel hose are two separate components of the engine that serve different purposes. Plaintiffs' experts did not offer any opinion on causation related to the fuel lines. *See* Fiedler Report; Maier Report; Seader Reports. Rather, Maier stated, "I'm not saying that [the fuel lines routed close to a heat source] is a causal factor in this crash" and even so, "it wasn't contributory [to the accident]." Maier Dep. at 366:7-19. Maier also denied having any opinion on causation related to the fuel hose. Specifically, Maier testified that he was "not specifically aware of the effects of the in-flight I fire on the fuel [hose] between . . . the flow divider and the [fuel servo]" and that he did not have "specific evidence saying this is exactly what the failure was. . . . " *Id.* at 367:11-16.

Regarding the exhaust valves in cylinders #4 and #6, Plaintiffs' experts agreed that cylinder #4 was not stuck. *See* Seader Dep. at 150:24-151:2; *see also* Maier Dep. at 222:1-4. Both Maier and Seader opined that the allegedly stuck valve in cylinder #6 was not the cause of the accident. Maier testified that one intermittently stuck valve "in of itself, the accident is not going to occur just purely by that" because "the engine will still continue to produce power." Maier

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[7] By way of example, Seader stated "[a] fuel hose, fuel line. I—I see those as almost synonymous. I don't see a big difference in that." (Def.'s Mot. for Summ. J. (Def.'s Mot.) Ex. 7 (Seader Dep.), at 312:5-7, Oct. 27, 2023.) Furthermore, while Maier testified as to other cases where there have been allegations of defective fuel lines, he explained that the part of the engine that he was referencing as fuel lines were "the fuel lines that run between the fuel servo and the flow divider," which in fact is the fuel hose. (Def.'s Mot. Ex. 8 (Maier Dep.), at 367:21-368:6, Oct. 26, 2023.)

Dep. at 244:18-25, 245:18-20. Seader testified that although "[t]he stuck valve was part of the malfunctions," he affirmed that, "it didn't contribute the weight of the burden at all towards the catastrophic end to this accident." Seader Dep. at 330:9-12. Seader confirmed further that "[an intermittently stuck valve] isn't what caused this airplane to plow into the house." *Id.* at 151:6-7; *see id.* at 329:13-15.

Therefore, because the expert testimony cannot establish causation relating to any parts for which Avco would be liable, the record lacks the necessary competent evidence to establish a genuine issue of material fact. *See Gray*, 522 A.2d at 741.

4. Count IV: Negligent Infliction of Emotional Distress

The Rhode Island Supreme Court recognizes a cause of action for negligent infliction of emotional distress only "in limited circumstances where the plaintiff is either in the zone of physical danger, or is a bystander to a tragic incident involving someone with whom he or she is closely related, and the plaintiff suffers serious emotional harm accompanied by some physical manifestations of his or her distress as a result of the defendant's negligence." *Swerdlick v. Koch*, 721 A.2d 849, 864 (R.I. 1998) (emphasis added).

It is well settled that if a plaintiff fails to substantiate a claim under a specific theory of liability, then the pursuit of a negligent infliction of emotional distress claim predicated on that underlying theory also fails. *See Malinou v. Miriam Hospital*, 24 A.3d 497, 512 (R.I. 2011); *see also Albanese v. Town of Narragansett*, 135 A.3d 1179, 1191 (R.I. 2016). In *Malinou*, the Rhode Island Supreme Court explicitly

stated that in order "to have a viable claim for negligent infliction of emotional distress, a plaintiff first must prove by competent evidence that the alleged injury is the result of a negligent act of a defendant." *Malinou*, 24 A.3d at 512. In other words, Plaintiffs' claim for negligent infliction of emotional distress is contingent upon their claims of strict liability, negligence, and/or breach of warranties.

In this case, as discussed in Part III, Section B, *supra*, Plaintiffs failed to set forth, through competent evidence, specific facts showing that there is a genuine issue of material fact to support their underlying claims; thus, Plaintiffs do not have a viable claim for negligent infliction of emotional distress. *See id.; see also Henry*, 254 A.3d at 834.

IV. Conclusion

For the reasons stated herein, this Court GRANTS Avco's Motion for Summary Judgment. Counsel shall confer and submit an appropriate order.

ORDER,
RHODE ISLAND SUPERIOR COURT
(DECEMBER 18, 2023)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, Individually, and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, Deceased; and WILLIAM GREGORY YOUNG and DEBRA ANNE THIGPEN, Individually, and for an on Behalf of the Estate and Wrongful Death Beneficiaries of William Clayton Young, Deceased

v.

AVCO CORPORATION

C.A. No. PC-2015-4900

Before: Richard LICHT, Associate Justice, J.

ORDER

This matter came before the Court (Licht, J.) on November 14 and 15, 2023 on Defendant Avco Corporation's ("Avco") Motion for Partial Summary Judgment Under the General Aviation Revitalization Act ("Motion"). After briefing and argument, and for the reasons set forth in the Court's written decision of November 28, 2023, it is hereby ORDERED, ADJUDGED, and DECREED:

Avco's Motion is GRANTED.

ENTER:

/s/ Richard Licht
Associate Justice, J.

PER ORDER:

/s/ Michael C. Rampone
Deputy Clerk I

Dated: 12/18/2023

ORDER DENYING PLAINTIFFS' MOTION TO COMPEL, RHODE ISLAND SUPERIOR COURT (OCTOBER 2, 2023)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, et al.,

Plaintiffs,

v.

AVCO CORPORATION,

Defendant.

No. PC-2015-4900

Before: Richard LICHT, Associate Justice, J.

ORDER DENYING PLAINTIFFS' MOTION TO COMPEL

This matter came before the Court (Licht, J.) on September 15, 2023, on Plaintiffs' Motion to Compel (the "Motion"), which requested that the Court compel Defendant Avco Corporation ("Avco") to produce a witness(s) pursuant to Super. Ct. R. Civ. P. 30(b)(6) to provide testimony on all topics set forth in the Notice of Deposition attached as Exhibit A to Plaintiffs' Motion, and on Avco's Objection thereto.

Specifically, Plaintiffs noticed the deposition of Avco's Rule 30(b)(6) corporate designee(s) on the following topics:

1. The design, function, malfunction, failure modes, and testing of the IO-540 model engine's fuel delivery system;
2. The design, function, malfunction, failure modes, and testing of the IO-540 model engine's fuel injector lines;
3. The design, function, malfunction, failure modes, and testing of the IO-540 model engine's fuel flow divider;
4. The design, function, malfunction, failure modes, and testing of the IO-540 model engine's cylinder assemblies;
5. The manufacture, sale, and testing of the cylinder assemblies that were installed on the accident engine;
6. Lycoming work order #9148/169119;
7. The manufacture, sale, and testing of the fuel injector lines that were installed on the accident engine;
8. Testing and reports that are applicable to the IO-540 concerning engine fire(s);
9. Communication with the FAA concerning malfunctions of the IO-540 engine's fuel delivery system, fuel flow divider, cylinders, valves, and/or fires in the IO-540 engine;
10. Warnings concerning in-flight engine fires; and

11. The effect an in-flight engine fire has on engine performance.

Avco objected to Plaintiffs' Notice, and agreed to produce its Rule 30(b)(6) witness on the following on September 18, 2023:

1. The design and testing of the IO-540-K1A5 exhaust valves and reports of stuck exhaust valves in an IO-540-K1A5 engine.
2. Reports of loose plungers in the flow divider of the IO-540-K1A5 engine. (Please note that Avco does not manufacture or design the flow divider or its plunger).
3. Reports of cracked bellows in the fuel servo of the IO-540-K1A5 engine. (Please note that Avco does not manufacture or design the fuel servo or the bellows).
4. The manufacture, sale and testing of the cylinder assemblies that were installed on the accident engine.
5. Lycoming work order #9148/169119
6. Communications with the FAA concerning stuck exhaust valves in the cylinders limited to the date of the sale of the cylinders—June 11, 2004 to the present.

After a hearing thereon and for the reasons stated on the record during the August 15, 2023 hearing, it is hereby ORDERED, ADJUDGED and DECREED as follows:

Plaintiffs' Motion is denied.

ENTER:

/s/ Richard Licht
Associate Justice, J.

PER ORDER:

/s/ Michael C. Rampone
Deputy Clerk I

Dated: 10/2/2023

ORDER ON DEFENDANT'S MOTION TO COMPEL, RHODE ISLAND SUPERIOR COURT (JULY 29, 2021)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, et al.,

Plaintiffs,

v.

AVCO CORPORATION,

Defendant.

No. PC-2015-4900

Before: Richard LICHT, Associate Justice, J.

ORDER ON DEFENDANT'S MOTION TO COMPEL

This matter came before the Court (Licht, J.) on April 15, 2021 on the following:

(1) Defendant Avco Corporation's Motion to Strike Certain Objections and Answers to its Discovery Requests and Motion to Compel More Responsive Answers and Documents ("Defendant's Motion to Compel");

(2) Plaintiffs' Memorandum of Law in Opposition to Defendant Avco Corporation's Motion to Strike

Certain Objections and Answers to its Discovery Requests and Motion to Compel More Responsive Answers and Documents; and

(3) Defendant Avco Corporation's Reply Memorandum in Support of Motion to Strike Certain Objections and Answers to its Discovery Requests and Motion to Compel More Responsive Answers and Documents.

After a hearing thereon and after having received (1) Defendant Avco Corporation's Supplemental Memorandum Addressing the General Aviation Revitalization Act and (2) Plaintiffs' Supplemental Memorandum of Law in Support of Plaintiffs' Motion to Strike Objections and Compel Defendant Avco Corporation to Provide Responses and Documents to Plaintiffs' First Request for Production of Documents, for the reasons stated by the Court on the record during the April 15, 2021 hearing and the Court's July 8, 2021 Decision, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Defendants' Motion to Compel is GRANTED in part and DENIED in part as follows:

a. Plaintiffs are bound by the representations they have made and the answers they have provided thus far.

b. Plaintiffs are expected to supplement their answers and produce additional documents if new facts and documents are unveiled during the discovery process.

c. Plaintiffs' objections to interrogatories seeking the factual bases for Plaintiffs' allegations in the Mississippi Litigation are stricken and

Plaintiffs must provide answers as to what their theory is against the defendant in the Mississippi Litigation.

d. Plaintiffs must produce any documents concerning settlements with parties regarding the Accident subject to the terms of the Protective Order in this case.

AVCO CORPORATION
By its attorneys,

/s/ Nicole J. Benjamin

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Dated: July 19, 2021

ENTERED as an Order of this Court's this 29th day of July, 2021.

Enter:

/s/ Richard Licht
Associate Justice

By Order:

/s/ Michael C. Rampone
Deputy Clerk I

DECISION,
RHODE ISLAND SUPERIOR COURT
(JULY 8, 2021)

SUPERIOR COURT,
STATE OF RHODE ISLAND PROVIDENCE, SC

CAROL WILLIAMS, Individually, and for and on behalf of the Estate and the Wrongful Death Beneficiaries of Anthony David Williams, Deceased; and WILLIAM GREGORY YOUNG and DEBRA ANNE THIGPEN, Individually, and for and on Behalf of the Estate and Wrongful Death Beneficiaries of William Clayton Young, Deceased

v.

AVCO CORPORATION

C.A. No. PC-2015-4900

Before: LICHT, J.

DECISION

LICHT, J. There are two discovery motions before the Court: (1) Plaintiffs' Motion to Strike Objections and to Compel Defendant Avco Corporation to Provide Responses and Documents to Plaintiffs' First Request for Production of Documents: and (2) Defendant's Motion to Strike Certain Objections and Answers to its Discovery Requests and Motion to Compel More Responsive Answers and Documents. Defendant objects to Plaintiffs' motion, arguing in pertinent part that

Plaintiffs' failure to adhere to the General Aviation Revitalization Act's fraud pleading requirement precludes them from obtaining discovery. As to Defendant's Motion, the Court believes it was resolved at the hearing on these motions, but the Court will, in this Decision, summarize what it believes transpired at that hearing.

I. Facts and Travel

On November 13, 2012, Anthony David Williams, William Clayton Young, and John Tilton, Jr. (Decedents) boarded a Piper PA-32-300 Cherokee 6 aircraft (Aircraft) in Jackson, Mississippi with a destination of Raymond, Mississippi. Amended Compl. ¶ 9. The Aircraft was powered by a single Lycoming 10-540-K1A5 fuel injected engine, which was designed, manufactured, sold, supplied, overhauled, and/or rebuilt by Avco Corporation (Defendant). *Id.* ¶ 33. Prior to departure, the Aircraft was taken out of the hangar, the main fuel tanks were topped off, a pre-flight inspection was performed, and the Aircraft was cleared for takeoff. *Id* ¶ 18, 19. While in flight, Air Traffic Control received a message indicating that the Decedents were experiencing some engine difficulties and were returning back. *Id* in ¶¶ 20-22.

Unfortunately, the Aircraft impacted approximately 0.8 nautical miles south of the departure end of Runway 16 in Jackson, Mississippi, and erupted into flames and smoke. *Id.* ¶ 26. As a result of the accident, the Decedents were fatally injured due to the "inhalation of products of combustion." *Id.* ¶ 27. Carol Williams, wife and statutory beneficiary of decedent Anthony David Williams, along with William Gregory Young and Debra Anne Thigpen, children and statutory

beneficiaries of decedent William Clayton Young (hereinafter referred to collectively as Plaintiffs) brought this action against Defendant. *Id.* ¶¶ 1-3. Plaintiffs filed an original complaint in November of 2015 to which Defendant answered and asserted as a defense the General Aviation Revitalization Act of 1994 (GARA). Plaintiffs subsequently submitted an amended complaint in May of 2020, informing this Court that they intended to rely on the exceptions to GARA.

Currently before this Court are two discovery motions, one filed by each party. The first motion is Defendant's Motion to Strike certain objections and answers to its discovery requests and to compel more responsive answers and documents. The second motion is Plaintiffs' Motion to Strike objections made by Defendant and to compel Defendant to provide responses and documents to Plaintiffs' first request for production of documents. Following a hearing on April 15, 2021 regarding the discovery issues, both Defendant and Plaintiffs filed legal memoranda regarding Defendant's GARA defense on April 22, 2021 and April 23, 2021, respectively.

II. Standard of Review

Rhode Island law allows litigants to obtain information "regarding any matter, not privileged, which is relevant to the subject matter" of the pending action by allowing the parties to participate in discovery. Super. R. Civ. P. 26(b). Rule 34 of the Superior Court Rules of Civil Procedure authorizes any party to serve on another party a request to produce any designated documents which are within the other party's "possession, custody or control" and

are relevant to the subject of the litigation. Super. R. Civ. P. 34. When a party objects to a request for production of documents or fails to respond adequately, the party seeking discovery may move for an order compelling production pursuant to Rule 37 of the Superior Court Rules of Civil Procedure. Super. R. Civ. P. 37. The party resisting discovery bears the burden of persuasion as to its objections. *See Vazquez-Fernandez v. Cambridge College, Inc.*, 269 F.R.D. 150, 155-56 (D.P.R. 2010).

In situations involving a motion to compel, this Court has "broad discretion" in its approach to resolving discovery disputes based on "the principle that Rhode Island's discovery rules are `liberal [and] designed to promote broad discovery among parties.'" *Corvese v. Medco Containment Services, Inc.*, 687 A.2d 880, 881-82 (R.I. 1997); *Lefore v. A.O. Smith Corp.*, No. PC121469, 2014 WL 2441477, at *2 (R.I. Super. May 23, 2014) (citing *Colvin v. Lekas*, 731 A.2d 718, 720 (R.I. 1999)). Despite this freedom, however, the discovery rules also empower the Court to restrict a discovery request on the grounds that it is "unduly burdensome" to the opposing party. Super. R. Civ. P. 26(b)(1), (c). Likewise, if a party fails to cooperate with legitimate discovery requests, the Court may, on motion from the discovering party, issue an order compelling the opposing party to respond. Super. R. Civ. P. 37(a).

III. Plaintiffs' Motion — GARA

A. Parties' Arguments

1. Defendant's Argument

Defendant argues that Plaintiffs' right to discovery is significantly limited under GARA. Def.'s Suppl.

Mem. at 1. Notably, GARA establishes a statute of repose under which no civil action may be brought against a manufacturer of an aircraft or aircraft components after eighteen years in connection with the "death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft." 49 U.S.C. § 40101(2)(a). GARA does, however, provide two exceptions to the eighteen-year limit, (1) cases of fraud or misrepresentation (Fraud Exception) and (2) cases involving new or replacement parts (New Parts Exception). 49 U.S.C. § 40101(2); *see also* 49 U. S.C. § 40101(b)(1).

As to Plaintiffs' reliance on the Fraud Exception outlined in GARA, Defendant argues that GARA's statute of repose bars Plaintiffs' claim as they have failed to plead with specificity the facts necessary to prove that Defendant knowingly misrepresented to, or knowingly concealed from, the Federal Aviation Association (FAA) certain required information. Def.'s Suppl. Mem. at 2. Defendant asserts that the pleading standard set forth in GARA is akin to Rule 9(b) of the Rules of Civil Procedure, which requires that parties plead fraud with particularity and cites to *Rickert v. Mitsubishi Heavy Industries, Ltd.*, 923 F. Supp. 1453, 1456 (D. Wyo. 1996) to support this assertion. Accordingly, Defendant argues that because Plaintiffs have not pled any specific facts giving rise to a claim of misrepresentation or concealment under § 2(b) of GARA, Plaintiffs should not be entitled to discovery until such facts are pled. *Id.* at 3-4. Defendant relies on *Schwartz v. Hawkins & Powers Aviation, Inc.*, No. 04-CV-195-D, 2005 WL 3776351, at *5, 6 (D. Wyo. 2005) (dismissing plaintiffs' claims with prejudice under Rule 12(b)(6) where plaintiffs failed to aver facts supporting

the elements of a knowing misrepresentation with specificity) as well as other cases to supports its contention.

As to Plaintiffs' reliance on the New Parts Exception, Defendant similarly asserts that Plaintiffs have failed to identify the parts or components they maintain were defective. Def.'s Suppl. Mem. at 5. Accordingly, Defendant contends that discovery should be contingent on Plaintiffs identifying each allegedly new and/or replaced part and, to the extent that Plaintiffs can do so, discovery should be limited to the identified new or replaced part. *Id.*

2. Plaintiffs' Argument

Plaintiffs do not dispute that the engine at issue was installed more than eighteen years prior to the accident at issue. *Id.* at 1-2. Rather, Plaintiffs rely on the two exceptions to GARA and assert that nothing in the legislative history of the Act suggests that Plaintiffs must prove that GARA does not apply before being able to obtain discovery. Pls.' Suppl. Mem. at 5. To that extent, Plaintiffs respond to Defendant's argument by highlighting that their Amended Complaint satisfies the pleading standard set forth in GARA and avers specific facts with respect to both the Fraud Exception and the New Parts Exception. *Id.* at 1-2. Therefore, Plaintiffs posit that Defendant's challenge is without merit. *Id.* at 2.

Plaintiffs further argue that the legislative history of GARA indicates "a careful Congressional balancing of the competing interests of aviation manufacturers and accident victims." *Id.* Plaintiffs reference proposed bills presented during the 99th, 100th, 101st, and 102nd Congressional terms which "would have marked

a wholesale vindication of the rights of manufactures over accident victims." *Id* These bills were later rejected by Congress, which chose instead to enact GARA in the 103rd term. *Id.* Citing to the House Reports by the 103rd Congressional term and a Senate Report, Plaintiffs maintain that the legislative intent behind GARA was to be' "interest-balancing," containing provisions that both benefit aircraft manufacturers and accident victims alike. *Id.* at 4.

Lastly, Plaintiffs assert that GARA does not preempt their ability to obtain discovery pursuant to the Rhode Island Rules of Civil Procedure. *Id* Plaintiffs rely on *Johnson v. Precision Airmotive, LLC*, No. 4:07CV1695 CDP., 2008 WL 2570825, at *3 (E.D. Mo. June 26, 2008) and *LeBlanc v. Panther Helicopters, Inc.*, CIVIL ACTION NOS: 14-1617, 14-1772, 14-1791, 14-1875, 14-2326, 2016 WL 1161274, at *5 (E.D. La. Mar. 23, 2016) to substantiate their contention. Notably, each of these cases denied a defendants' Motion for Summary Judgment and allowed discovery on the grounds that discovery could be helpful to determine if an exception to GARA does apply.

B. Analysis

Plaintiffs' investigation confirmed that the accident at issue was caused by the failure of the Lycoming 10-540 engine. Pl.'s Mot. Strike at 2. The investigation further concluded the following: the plunger in the flow divider of the Lycoming fuel system was extremely loose, which allowed fuel to enter the airside, leak out of the vent hole, and cause large quantities of fuel to spew onto the engine while in flight; the Lycoming engine lacked an overboard line to collect and redirect the fuel, which other model engines manufactured by competitors had; the fuel servo bellows was fractured;

and number four and number six exhaust valves were stuck. *Id.* Accordingly, Plaintiffs seek to discover the following documents relating to the design, certification, and continuing airworthiness of the Lycoming 10-540-K1A5 engine, its fuel system, fuel servo, flow divider, and their parts and components:

> engineering drawings (RFP 24);
>
> materials specifications (RFP 25);
>
> design specification (RFP 26);
>
> build specifications (RFP 27);
>
> engineering change orders (RFP 28);
>
> engineering reports (RFP 29);
>
> test reports (RFP 30);
>
> data recorded during flight testing (RFP 31);
>
> type design (RFP 32);
>
> meeting minutes, emails, correspondence, contracts, or other documents exchanged between Lycoming and the manufacturer of the fuel servo (RFP 35);
>
> correspondence, emails, and other documents exchanged with the FAA (RFP 37);
>
> warranty claims (RFP 39);
>
> SIR Reports (RFP 40);
>
> reports or communications discussing Lycoming's evaluation of products returned from the field for functional evaluation (RFP 41);
>
> accident reports (RFP 42);
>
> reports, photographs, videos, data, and other documents discussing other accidents or incidents (RFP 43);

expert reports, discovery responses, and depositions discussing other accidents or incidents (RFP 44);

documents submitted to the FAA pursuant to 14 C.F.R. § 21.3 (RFP 46); and

FAA Special Certification Review Teams (RFP 47). *Id.* at 11.

Fraud Exception

GARA imposes a statute of repose which "generally bars suits against airplane manufacturers brought more than eighteen years after the delivery date to an initial purchaser of the aircraft." *Robinson v. Hartzell Propeller, Inc.*, 454 F.3d 163, 165 (3d Cir. 2006); *see also* 49 U.S.C. § 40101. As explained above, there are two exceptions to GARA. The Fraud Exception provides that GARA will not apply "if the claimant pleads with specificity the facts necessary to prove . . . that the manufacturer . . . knowingly misrepresented . . . or concealed or withheld from the [FAA], required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component." 49 U.S.C. § 40101(b)(1).

Defendant contends that Plaintiffs have failed to meet the pleading requirement under GARA and, therefore, should be restricted from discovery. Def.'s Mem. at 5. Specifically, Defendant asserts that the pleading standard set forth under GARA is "an obvious analog to" Rule 9(b) of the Rules of Civil Procedure, which requires that parties plead fraud with particularity. *See Rickert*, 923 F. Supp. at 1456. Accordingly, to bring a claim under the Fraud Exception to GARA and obtain discovery, Plaintiffs must aver

specific facts regarding the basis of knowledge for the exception. Def.'s Mem. at 2-3.

In *Schwartz*, 2005 WL 3776351, at *5, the Court held that the plaintiffs failed to meet the pleading standard outlined in the Fraud Exception of GARA and, therefore, the exception did not apply. In that case, the plaintiffs' complaint contained conclusory statements such as "[c]orporate defendants willfully and wantonly failed to properly update the maintenance required on this H&P plane . . . " and that the defendant "knowingly withheld information about the modifications performed on the aircraft." *Id.* at *5. Accordingly, the Court explained that in both instances, the plaintiffs failed to plead "specific facts . . . sufficient to show that the corporate defendants knew of modifications to the aircraft [or] concealed information from the FAA. . . . " *Id*.

To that end, knowledge of previous accidents involving the same or similar aircraft or aircraft components is not enough to satisfy the requirements of the misrepresentation exception. *See Theobald v. Piper Aircraft, Inc.*, 309 F. Supp. 3d 1253, 1263 (S.D. Fla. 2018). In *Theobald*, the plaintiffs asserted that the defendant was not entitled to protection under GARA because of its "concealment and withholding of the cause of this accident and other similar ones." *Id* at 1261. Specifically, the plaintiffs relied heavily on expert reports which concluded that defendants should have "been on notice" of the problem that caused the accident because it had occurred in other accidents. *Id.* at 1262. However, the Court reasoned that such conclusory statements are not enough to invoke the Fraud Exception without further evidence

to support the statement. *Id.* at 1263. The Court explained:

> "Stating simply that prior accidents should have put Piper on notice of a problem with its aircrafts or that Piper could have conducted better tests of its aircrafts is insufficient to meet the requirements of the Misrepresentation Exception to GARA, as Plaintiffs do not point to a single instance where Piper had to disclose information and either did not or misrepresented that information to the FAA." *Id*

Cases involving a GARA defense are not always absolutely barred from discovery. In *Johnson*, the United States District Court for the Eastern District of Missouri dealt with an airplane crash that resulted in the deaths of four passengers. *Id* at *1. The defendants in that case asserted that GARA establishes an "absolute right not to stand trial," an argument which likened the defendants' defense to a theory of absolute immunity. *Id.* at *2. The Court rejected such an argument, holding that:

> "GARA does not say anything about discovery. It does not establish any procedure for litigating airplane crash cases, nor does it restrict the types of evidence discoverable by plaintiffs. GARA merely sets forth a defense to liability in cases where the relevant airplane parts are more than eighteen years old . . . There is no reason plaintiffs should be denied discovery merely because defendants have filed a motion under GARA." *Id.* at *2.

To that end, the defendants in that case additionally requested that if discovery is allowed, that it be "strictly limited to GARA issues." *Id* In response, the Court concluded that while a reasonable request, the process of determining what kind of discovery is "strictly limited" is likely "workable in practice" and, therefore, denied the defendants' request. *Id.* Moreover, the Court supplemented its reasoning behind allowing discovery on the grounds that "discovery is also required to determine whether plaintiffs' claims fit within the misrepresentation exception to GARA." *Id.*

However, while discovery is not completely barred in situations involving a GARA defense, the plaintiff must still satisfy the pleading standard to obtain discovery. *See Clark v. PHI, Inc.*, Civil Action No. 12-411, 2012 WL 3065429, at *3-4 (E.D. La. 2012). In *Clark*, the defendants raised GARA as a defense to which the plaintiff responded, asserting that discovery would be helpful to determine if the knowing misrepresentation exception applies in the instant case. *Id* at *4. The Court, however, rejected the plaintiff's argument and found that the potential discovery that could unveil evidence which would prevent the application of GARA "does not excuse Plaintiff's neglect of GARA's pleading standard for the knowing misrepresentation exception." *Id.* at *5 (emphasis added).

In this case, the Court finds that Plaintiffs must, from the outset, meet the pleading requirement under GARA to properly invoke the Fraud Exception. *See Tillman v. Raytheon Co.*, 430 S.W.3d 698, 704 (Ark. 2013) (concluding that a claimant must set out facts to show that the fraud exception applies and must do so with specificity). While Plaintiffs are correct in

asserting that courts have allowed discovery to occur in cases where a GARA defense is raised, the cases cited by Plaintiffs cannot be reconciled with the facts in this case as none address the issue of the pleading requirement. Furthermore, Plaintiffs focus their attention on the legislative intent behind enacting GARA and the "Congressional balancing" of protecting both the manufacturers and accident victims. While a valid argument, this Court is unable to locate anything in the law that supports Plaintiffs' inference that the policy of protecting accident victims somehow supersedes the plain language of the statute. Moreover, as outlined above, courts—in keeping the policy behind GARA in mind—have been reluctant to allow discovery even in situations where discovery may aid the plaintiff in avoiding the application of GARA.

Looking at the Amended Complaint, Plaintiffs fail to plead with particularity facts sufficient to show that Defendants knowingly misrepresented or willingly withheld information from the FAA. Notably, Plaintiffs assert detailed information stemming from a post-accident investigation in which they identify problems with various components of the aircraft such as the plunger in the flow divider, the lack of overboard line, the fuel servo, and exhaust valves four and six. *See* Amended Compl. ¶¶ 51-52, 55-56. However, like the plaintiffs in *Theobald*, Plaintiffs in this case merely assert that:

> "A review of the prior failures set forth in Service Difficulty Reports, and, other accidents, and incidents and other litigation involving the 540 series engines and similar models make it clear that Lycoming was well

> aware of the havoc that fuel spilling over the hot engine cases." *Id* ¶ 58.

Plaintiffs further claimed that despite this information, Defendant failed to notify the FAA of the extent of the problems, specifically, by failing to redesign the fuel delivery system and fix the underlying problem. *Id.* ¶¶ 67-68. While Plaintiffs undoubtedly provided more detailed information in their Amended Complaint, Plaintiffs have still failed to demonstrate specific facts that show Defendant knowingly misrepresented, concealed, or withheld any information from the FAA. *See Theobald*, 309 F. Supp. 3d at 1263. Because Plaintiffs have failed to plead with the requisite specificity, the Fraud Exception to GARA does not apply and Plaintiffs are not now entitled to discovery.

New Parts Exception

Although Plaintiffs have not met the requirements to satisfy the Fraud Exception to GARA, they may be able to overcome GARA's statute of repose through the New Parts Exception. This exception establishes a new period of repose for situations involving new and/or replacement parts and provides that the statute of repose will restart "beginning on the date of completion of the replacement or addition." 49 U.S.C. § 40101(a)(2). Of note, courts have held that based on the legislative history of GARA, this exception only applies against the manufacturer of the new component part installed after delivery as opposed to the original manufacturer of the aircraft. *Theobald*, 309 F. Supp. 3d at 1256. In other words, one cannot try to hold the manufacturer of the whole aircraft liable for a new part but rather, the action must be against the manufacturer of the new part directly.

Defendant similarly maintains that Plaintiffs have failed to adequately identify which components of the Aircraft were defective for the New Parts Exception to apply. Def.'s Suppl. Mem. at 5. As explained above, the. New Parts Exception applies only against the entity that manufactured the replacement part and not the manufacturer of the aircraft. *Theobald*, 309 F. Supp. 3d at 1265; *Hiser v. Bell Helicopter Textron, Inc.*, 111 Cal. App. 4th 640, 651 (Cal. Ct. App. 2003). Accordingly, Defendant argues that it is "critically important that Plaintiffs identify each allegedly new part and, even if this Court were to allow discovery, it should be specifically limited to that new part because Plaintiffs' claims against Avco for any other part remains barred by GARA." Def.'s Suppl. Mem. at 5.

To that effect, because the New Parts Exception does not require Plaintiffs to satisfy a pleading standard like in the Fraud Exception, this Court may find that they are entitled to discover, in part, the requested documents in order to determine whether the New Parts Exception applies. *See Leblanc*, 2016 WL 1161274, at *5 ("Discovery will be necessary to determine what was done to the helicopter and when, and which parties may have manufactured parts of the helicopter that were less than eighteen years old."); *see also Johnson*, 2008 WL 2570825, at *3; *Clark*, 2012 WL 3065429, at *3.

The United States District Court for the Eastern District of Louisiana dealt with a related set of facts in *Leblanc* which involved a helicopter crash resulting in the death of one person and severe injuries to three passengers. *Id.* at *1. In that case, the defendants similarly raised GARA as a defense and moved for

summary judgment on the grounds that the helicopter was delivered to the original purchaser in May 1991 and, therefore, the plaintiffs' claim is barred. *Id.* at *2. On the other hand, the plaintiffs asserted that discovery would "disclose defects to components of the helicopter that were delivered within the last eighteen years" which would, therefore, bar the application of GARA. *Id* at *2.

The Court decided in favor of the plaintiffs and denied summary judgment on the grounds that the defendants' motion for summary judgment was premature as it had been "filed . . . two weeks before the Court entered a scheduling order. Initial disclosures have not been completed and almost no discovery has been conducted." *Id.* at *5. The Court further reiterated the reasoning outlined in *Johnson*, explaining that "[d]iscovery will be necessary to determine what was done to the helicopter and when, and which parties have manufactured parts of the helicopter that were less than eighteen years old." *Id.*

In this case, Plaintiffs assert that the Aircraft was equipped with a Lycoming 10-540-K1A5 engine and that the accident was caused by the failure of such engine. Pl.'s Mot. Strike at 1-2. As described above, Plaintiffs also identified four components *(e.g.*, the plunger in the flow divider of the fuel system, the lack of an overboard line, the fuel servo bellows, and exhaust valves four and six) of the engine that could have contributed to the engine failure. *Id.* Accordingly, to the extent that Plaintiffs have identified specific parts that allegedly caused the accident, they should be allowed to discover documents pertaining to those four parts to determine whether those parts fall under the New Parts Exception.

IV. Defendant's Motion

As a separate issue, also before this Court is Defendant's Motion to Strike certain objections and answers to its discovery requests and to compel more responsive answers and documents. Defendant's argument is primarily based on (1) Plaintiffs' objections to Defendant's interrogatories and requests for production of documents and (2) Plaintiffs' incomplete and non-responsive interrogatory responses. Plaintiffs, on the other hand, assert that they have given all the facts, factual averments, and allegations as well as the support for such averments and allegations to Defendant in their response. Moreover, Plaintiffs assert that when they had responsive documents in their possession, custody, and control, they have been provided. Accordingly, this Court finds that if it is Plaintiffs' position that they have produced all of the documents and information they have, then they can do no more. Accordingly, this Court holds that Plaintiffs are bound by the representations they have made and the answers they have provided thus far. Plaintiffs are expected to supplement their answers and produce additional documents if new facts and documents are unveiled during the discovery process.

Defendant additionally requests that the Court strike Plaintiffs' answers to interrogatories seeking the factual bases for Plaintiffs' allegations in the Mississippi Litigation and compel more responsive answers. As to this issue, this Court grants Defendant's request, and Plaintiffs must provide answers as to what their theory is against the defendant in the Mississippi Litigation.

Lastly, Defendant requested that Plaintiffs produce documents relating to their settlements with other

parties concerning the Accident, to which Plaintiffs have objected on the basis that such documents are confidential. As discussed at oral argument, upon the Court entering a Protective Order, Plaintiffs will produce any documents concerning settlements with parties regarding the Accident.

V. Conclusion

In conclusion, this Court denies, in part, Plaintiffs' Motion to Strike objections made by Defendant and to compel Defendant to provide responses and documents to Plaintiffs' first request for production of documents because Plaintiffs have failed to meet the pleading requirement set out in the Fraud Exception of GARA. However, this Court grants, in part, Plaintiffs' motion based on the New Parts Exception but limits Plaintiffs' discovery to documents regarding the plunger in the flow divider of the fuel system, the lack of an overboard line, the fuel servo bellows, and exhaust valves four and six. In addition, this Court grants in part and denies in part Defendant's Motion to Strike certain objections and answers to its discovery requests and to compel more responsive answers and documents. Counsel shall confer and submit an Order.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS; AND RULES AND REGULATIONS

General Aviation Revitalization Act of 1994

Section 1.
Short title.

This Act may be cited as the "General Aviation Revitalization Act of 1994".

Sec. 2.
Time Limitations on Civil Actions Against Aircraft Manufacturers.

(a) In General.—Except as provided in subsection (b), no civil action for damages for death or injury to persons or damage to property arising out of an accident involving a general aviation aircraft may be brought against the manufacturer of the aircraft or the manufacturer of any new component, system, subassembly, or other part of the aircraft, in its capacity as a manufacturer if the accident occurred—

(1) after the applicable limitation period beginning on—

(A) the date of delivery of the aircraft to its first purchaser or lessee, if delivered directly from the manufacturer; or

(B) the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft; or

(2) with respect to any new component, system, subassembly, or other part which replaced another component, system, subassembly, or

other part originally in, or which was added to, the aircraft, and which is alleged to have caused such death, injury, or damage, after the applicable limitation period beginning on the date of completion of the replacement or addition.

(b) Exceptions.— Subsection (a) does not apply—

(1) if the claimant pleads with specificity the facts necessary to prove, and proves, that the manufacturer with respect to a type certificate or airworthiness certificate for, or obligations with respect to continuing airworthiness of, an aircraft or a component, system, subassembly, or other part of an aircraft knowingly misrepresented to the Federal Aviation Administration, [*1553] or concealed or withheld from the Federal Aviation Administration, required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the component, system, subassembly, or other part, that is causally related to the harm which the claimant allegedly suffered;

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

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

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

(c) General Aviation Aircraft Defined.—For the purposes of this Act, the term "general aviation aircraft" means any aircraft for which a type certificate or an airworthiness certificate has been issued by the Administrator of the Federal Aviation Administration, which, at the time such certificate was originally issued, had a maximum seating capacity of fewer than 20 passengers, and which was not, at the time of the accident, engaged in scheduled passenger-carrying operations as defined under regulations in effect under the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.) at the time of the accident.

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

Sec. 3.
Other Definitions.

For purposes of this Act—

(1) the term "aircraft" has the meaning given such term in section 101(5) of the Federal Aviation Act of 1958 (49 U.S.C. 1301(5));

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

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

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

Sec. 4.
Effective Date;

Application of Act.

(a) Effective Date.— Except as provided in subsection (b), this Act shall take effect on the date of the enactment of this Act.

(b) Application of Act.— This Act shall not apply with respect to civil actions commenced before the date of the enactment of this Act.

[. . .]

R.I. Const. Art. I, § 5

§ 5. Entitlement to remedies for injuries and wrongs — Right to justice.

Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws.

14 CFR 21.3

§ 21.3 Reporting of failures, malfunctions, and defects.

(a) The holder of a type certificate (including amended or supplemental type certificates), a PMA, or a TSO authorization, or the licensee of a type

certificate must report any failure, malfunction, or defect in any product or article manufactured by it that it determines has resulted in any of the occurrences listed in paragraph (c) of this section.

(b) The holder of a type certificate (including amended or supplemental type certificates), a PMA, or a TSO authorization, or the licensee of a type certificate must report any defect in any product or article manufactured by it that has left its quality system and that it determines could result in any of the occurrences listed in paragraph (c) of this section.

(c) The following occurrences must be reported as provided in paragraphs (a) and (b) of this section:

(1) Fires caused by a system or equipment failure, malfunction, or defect.

(2) An engine exhaust system failure, malfunction, or defect which causes damage to the engine, adjacent aircraft structure, equipment, or components.

(3) The accumulation or circulation of toxic or noxious gases in the crew compartment or passenger cabin.

(4) A malfunction, failure, or defect of a propeller control system.

(5) A propeller or rotorcraft hub or blade structural failure.

(6) Flammable fluid leakage in areas where an ignition source normally exists.

(7) A brake system failure caused by structural or material failure during operation.

(8) A significant aircraft primary structural defect or failure caused by any autogenous condition (fatigue, understrength, corrosion, etc.).

(9) Any abnormal vibration or buffeting caused by a structural or system malfunction, defect, or failure.

(10) An engine failure.

(11) Any structural or flight control system malfunction, defect, or failure which causes an interference with normal control of the aircraft for which derogates the flying qualities.

(12) A complete loss of more than one electrical power generating system or hydraulic power system during a given operation of the aircraft.

(13) A failure or malfunction of more than one attitude, airspeed, or altitude instrument during a given operation of the aircraft.

(d) The requirements of paragraph (a) of this section do not apply to—

(1) Failures, malfunctions, or defects that the holder of a type certificate (including amended or supplemental type certificates), PMA, TSO authorization, or the licensee of a type certificate determines—

(i) Were caused by improper maintenance or use;

(ii) Were reported to the FAA by another person under this chapter; or

(iii) Were reported under the accident reporting provisions of 49 CFR part 830

of the regulations of the National Transportation Safety Board.

(2) Failures, malfunctions, or defects in products or articles—

(i) Manufactured by a foreign manufacturer under a U.S. type certificate issued under § 21.29 or under an approval issued under § 21.621; or

(ii) Exported to the United States under § 21.502.

(e) Each report required by this section—

(1) Must be made to the FAA within 24 hours after it has determined that the failure, malfunction, or defect required to be reported has occurred. However, a report that is due on a Saturday or a Sunday may be delivered on the following Monday and one that is due on a holiday may be delivered on the next workday;

(2) Must be transmitted in a manner and form acceptable to the FAA and by the most expeditious method available; and

(3) Must include as much of the following information as is available and applicable:

(i) The applicable product and article identification information required by part 45 of this chapter;

(ii) Identification of the system involved; and

(iii) Nature of the failure, malfunction, or defect.

(f) If an accident investigation or service difficulty report shows that a product or article manufactured under this part is unsafe because of a manufacturing or design data defect, the holder of the production approval for that product or article must, upon request of the FAA, report to the FAA the results of its investigation and any action taken or proposed by the holder of that production approval to correct that defect. If action is required to correct the defect in an existing product or article, the holder of that production approval must send the data necessary for issuing an appropriate airworthiness directive to the FAA.

R.I. Gen. Laws § 10-7-1

10-7-1. Liability for damages for causing death.

Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the person who, or the corporation which, would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to a felony.

R.I. Gen. Laws § 10-7-1.1

10-7-1.1. Pecuniary damages — How determined.

Pecuniary damages to the beneficiaries described under § 10-7-2 and recoverable by the beneficiaries shall be ascertained as follows:

(1) Determine the gross amount of the decedent's prospective income or earnings over the remainder of his or her life expectancy, including all estimated income he or she would probably have earned by his or her own exertions, both physical and mental. Pecuniary damages shall include the value of homemaker services lost as a result of the death of a homemaker. The fair value of homemaker services shall not be limited to moneys actually expended to replace the services usually provided by the homemaker. In such a suit, the value of homemaker services may be shown by expert testimony, but expert testimony is not required.

(2) Deduct from the amount determined in subdivision (1) the estimated personal expenses that the decedent would probably have incurred for himself or herself, exclusive of any of his dependents, over the course of his or her life expectancy.

(3) Reduce the remainder thus ascertained to its present value as of the date of the award. In determining the award, evidence shall be admissible concerning economic trends, including but not limited to projected purchasing power of money, inflation, and projected increase or decrease in the costs of living.

R.I. Gen. Laws § 10-7-1.2

10-7-1.2. Liability for loss of consortium — Liability for loss of society and companionship.

(a) Whenever the death of a married person shall be caused by the wrongful act, neglect, or default of

another person, the decedent's spouse may recover damages against the person for loss of consortium and for the emotional distress, grief, and loss of enjoyment of life as a result of the death.

(b) Whenever the death of a parent or parents of a son or daughter shall be caused by the wrongful act, neglect, or default of another person, the son or daughter may recover damages against the person for the loss of parental society and companionship and for the emotional distress, grief, and loss of enjoyment of life as a result of the death.

(c) Whenever the death of a son or daughter shall be caused by the wrongful act, neglect, or default of another person, the parent or parents of the son or daughter may recover damages against the person for the loss of the son's or daughter's society and companionship and for the emotional distress, grief, and loss of enjoyment of life as a result of the death.

R.I. Super. R. Civ. P. 9

Rule 9. Pleading Special Matters.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial, or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

R.I. Super. R. Civ. P. 26

Rule 26. General Provisions Governing Discovery; Duty of Disclosure.

(a) Discovery Methods.

(1) In General. Parties may obtain discovery by one (1) or more of the following methods:

depositions upon oral examinations or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property under Rule 34 or 45(a) for inspection and other purposes; physical and mental examinations; and requests for admission. In accordance with Rule 5(d), discovery requests and responses shall not be filed with the court until they are used in the proceeding or the court orders their filing.

(2) Electronically Stored Information.

(A) In these rules:

(i) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; and

(ii) "Electronically stored information" means information stored in an electronic medium and is retrievable in perceivable format.

(B) If the parties so agree or if the court so orders upon motion by any party, all parties that have appeared in the proceeding shall confer concerning whether discovery of electronically stored information is reasonably likely to be sought in the proceeding. If discovery of electronically stored information is reasonably likely to be sought, the parties at the conference shall discuss:

(i) Any issues relating to preservation of the information;

(ii) The format in which each type of the information will be produced;

(iii) The period within which the information will be produced;

(iv) The method for asserting or preserving claims of privilege or of protection of the information as trial preparation materials, including whether such claims may be asserted after production;

(v) The method for asserting or preserving confidentiality and proprietary status of information relating to a party or a person not a party to the proceeding;

(vi) Whether allocation among the parties of the expense of production is appropriate; and

(vii) Any other issue relating to discovery of the information.

(C) If discovery of electronically stored information is reasonably likely to be sought, then:

(i) The parties shall develop and memorialize a proposed plan relating to discovery of the information; and

(ii) If the court so orders, submit to the court a written report that summarizes the plan and states the position of each party as to any issue about which they are unable to agree.

(D) The court may issue an order governing the discovery of electronically stored information pursuant to:

(i) A motion by a party seeking discovery of the information or by a party or person from which discovery of the information is sought;

(ii) A stipulation of the parties and of any person not a party from which discovery of the information is sought; or

(iii) The court's own motion, after reasonable notice to, and an opportunity to be heard from, the parties and any person not a party from which discovery of the information is sought.

(E) An order or plan governing discovery of electronically stored information may address:

(i) Whether discovery of the information is reasonably likely to be sought in the proceeding;

(ii) Preservation of the information;

(iii) The format in which each type of the information is to be produced;

(iv) The time within which the information is to be produced;

(v) The permissible scope of discovery of the information;

(vi) The method for asserting or preserving claims of privilege or of protection of the information as trial-preparation material after production;

(vii) The method for asserting or preserving confidentiality and the proprietary status of information relating to a

party or a person not a party to the proceeding;

(viii) Allocation of the expense of production; and

(ix) Any other issue relating to discovery of the information.

(F) Any motion under Rule 26(a)(2) must include a certification that the movant has in good faith conferred or attempted to confer with the other party or parties in an effort to agree upon a plan relating to the discovery of electronically stored information without court action.

(b) Discovery: Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information, or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in these rules shall be limited by the court if it determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance Agreements. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials. Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it; or

(B) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, to state the substance of the facts and opinions to which the expert is expected to testify, and to summarize the grounds for each opinion. A party may, through a request for production pursuant to Rule 34, a request attached to a notice of deposition pursuant to Rule 30(b)(5), or subpoena duces tecum pursuant to Rule 45, require any other party to produce all documents and materials relied upon by a person whom the other party expects to call as an expert witness at trial in formulating that expert's opinion(s). If documents and materials are requested, the procedures of Rules 34 and 45, respectively, shall apply to the request.

A party may depose any person who has been identified as an expert expected to

testify when the expert interrogatory has been responded to by the other party. Unless otherwise ordered by the court, the party seeking to depose the expert shall pay the expert the reasonable fee for the time spent attending the deposition and the reasonable expenses incurred in attending the deposition. In the absence of agreement between the parties as to the timing of disclosures required under this subdivision, any party may apply to the court for an order establishing a schedule of such interrogatories, responses, and depositions. Obligation to respond to interrogatories shall be stayed until the ruling on the application.

Written reports are not required under this rule. However, to the extent an expert prepares a report that is disclosed, the provisions of subdivision (b)(3) of this rule protect drafts of any such report regardless of the form in which the draft is recorded.

(B) A party may discover facts known and opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to

obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subdivision; and

(ii) With respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) These rules protect communications between the party's attorney and any witness designated as an expert under these rules, regardless of the form of the communications, except to the extent that the communications:

(i) Relate to compensation for the expert's study or testimony;

(ii) Identify facts or data that the party's attorney provided and that the expert relied on in forming the opinions to be expressed; or

(iii) Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(5) Claims of Privilege or Protection of Trial Preparation Material. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(6) Electronically Stored Information.

(A) A party may object to discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. In the party's objection, the party shall identify the reason for the undue burden or expense. On motion to compel discovery or for a protective order relating to the discovery of electronically stored information, a party objecting to discovery under Rule 26(b)(6) bears the burden of showing that the information is from a source that is not reasonably accessible because of undue burden or expense.

(B) The court may order discovery of electronically stored information that is from a source that is not reasonably accessible because of undue burden or expense if the party requesting discovery shows

that the likely benefit of the proposed discovery outweighs the likely burden or expense, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

(C) If the court orders discovery of electronically stored information under paragraph (B), the court may set conditions for discovery of the information, including allocation of the expense of discovery.

(D) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that:

(i) The information may be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) The discovery sought is unreasonably cumulative or duplicative;

(iii) The party seeking discovery has had ample opportunity by discovery in the proceeding to obtain the information sought; or

(iv) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance

of the requested discovery in resolving the issues.

(7) Claim of Privilege or Protection after Production of Electronically Stored Information.

(A) If electronically stored information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for the claim.

(B) After being notified of a claim of privilege or of protection under paragraph (A), a party shall immediately sequester the specified information and any copies it has and:

(i) Return or destroy the information and all copies and not use or disclose the information until the claim is resolved; or

(ii) Present the information to the court under seal for a determination of the claim and not otherwise use or disclose the information until the claim is resolved.

(C) If a party that received notice under paragraph (B) disclosed the information subject to the notice before being notified, the party shall take reasonable steps to retrieve the information.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accom-

panied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the disclosure or discovery not be had;

(2) That the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the court;

(6) That a deposition after being sealed be opened only by order of the court;

(7) That a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) That the parties simultaneously file specified documents or information enclosed in sealed

envelopes to be opened as directed by the court.

In ruling on a motion for a protective order the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired under the following circumstances:

(1) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(A) The identity and location of persons having knowledge of discoverable matters; and

(B) The identity of each person expected to be called as an expert witness at trial, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(A) The party knows that the response was incorrect when made; or

(B) The party knows that the response though correct when made is no longer true or complete and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(4) A party is under a continuing duty to furnish answers to interrogatories as provided in Rule 33(c).

(f) Signing of Discovery Requests, Responses, and Objections. Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one (1) attorney of record, other than responses that must be signed by the party, in the attorney's individual name and shall state the attorney's address, email address, bar number, and telephone number. A self-represented litigant shall sign the request, response, or objection and state the self-represented litigant's address, email address (if electing to utilize the EFS), and telephone number. The signature of the attorney, party, or self-represented litigant constitutes a certification that to the best of the signer's knowledge, information, and

belief, formed after a reasonable inquiry, the request, response, or objection is:

(1) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(3) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If without substantial justification a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

R.I. Super. R. Civ. P. 30

Rule 30. Depositions Upon Oral Examination.

(a) When Depositions May be Taken; When Leave Required.

(1) Any party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2). The attendance of witnesses may be compelled by subpoena as provided in Rule 45.

(2) A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(1), if the person to be examined is confined in prison or if, without the written stipulation of the parties:

(A) The person to be examined already has been deposed in the case; or

(B) A plaintiff seeks to take a deposition prior to the expiration of thirty (30) days after service of process on any defendant or the filing of a waiver of service, except that leave is not required:

(i) If a defendant has served notice of taking deposition or otherwise sought discovery; or

(ii) If the notice served by a plaintiff contains a certification, with supporting facts, that the person to be examined is expected to leave the State of Rhode Island and be unavailable for examination in this State unless deposed before that time.

(b) Notice of Examination: General Requirements; Special Notice; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for a transcription to be made from the recording of a deposition taken by non-stenographic means.

(3) With prior notice to the deponent and other parties, any party may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record

or transcript shall be made at that party's expense unless the court otherwise orders.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes:

(A) The officer's name and business address;

(B) The date, time, and place of the deposition;

(C) The name of the deponent;

(D) The administration of the oath or affirmation to the deponent; and

(E) An identification of all persons present.

If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(5) If documents are requested to be produced at a deposition, the notice to a party deponent shall be accompanied by a copy of a subpoena duces tecum or a request made in compliance

with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedures of Rules 34 and 45, respectively, shall apply to the request.

(6) A party may in the witness' notice or in a subpoena name as the deponent a public, private or governmental organization and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall serve and file, prior to the deposition, a written designation which identifies one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and shall set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by such means is taken in the county and at the place where the deponent is to answer questions.

(c) Examination and Cross-examination; Record of Examination; Oath; Objections. Examination and

cross-examination of witnesses may proceed as permitted at the trial under the provisions of the applicable Rhode Island Rules of Evidence except Rules 103 and 615. Subject to a contrary court order or agreement of the parties, no person whose presence at a deposition has been requested by any attorney of record or self-represented litigant shall be excluded from attending the deposition. However, attendance at depositions of persons other than the deposition officer (reporter), the witness, attorneys, and parties to the action shall not be permitted unless notice of same has been given to all attorneys of record and self-represented litigants at least forty-eight (48) hours before the deposition. The officer before whom the deposition is to be taken or, in a non-stenographic deposition, the examining attorney or self-represented litigant, shall put the witness on oath or affirmation and shall in person, or by someone acting under such person's direction and in such person's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means in accordance with subdivision (b)(2) of this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, to the evidence presented, to the conduct of any party, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition, but the examination shall proceed with the testimony being taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and that party

shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination.

(1) Any objection to evidence during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion under paragraph (3).

(2) By order, the court may limit the time permitted for the conduct of a deposition, but shall allow additional time consistent with Rule 26(b)(1) if needed for a fair examination of the deponent or if the deponent or another party impedes or delays the examination. If the court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof.

(3) At any time during a deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the county where the deposition is being taken may

order the officer or examining attorney conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order or to obtain a ruling by telephone. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(f) Certification and Filing by Officer; Copies; Opening.

(1) The officer or, in a non-stenographic deposition, the examining attorney or self-represented litigant, shall certify on the deposition transcript that the witness was duly

sworn and that the transcript is a true record of the testimony given by the witness. Unless otherwise ordered by the court, the original deposition transcript shall not be filed with the court. Rather, the self-represented litigant, examining attorney, or the attorney ordering a stenographic transcription shall securely seal the original deposition transcript in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]" and shall retain the original transcript, subject to making it available to the court or any other party upon request.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them the person may:

(A) Offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if the party affords to all parties fair opportunity to verify the copies by comparison with the originals; or

(B) Offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition.

Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) Upon being filed the deposition shall be open to inspection until such time as it is returned by the court to the examining attorney, unless otherwise ordered by the court.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the party and the party's attorney in so attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the other

party and that party's attorney in so attending, including reasonable attorney's fees.

R.I. Super. R. Civ. P. 34

Rule 34. Production of Documents,

Electronically Stored Information, and <u>Things;</u> <u>Entry Upon Land for Inspection for Other</u> Purposes.

(a) Scope. Any party may serve on any other party a request within the scope of Rule 26(b):

(1) To produce and permit the requesting party, or someone acting on the requesting party's behalf, to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) Any designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations) stored in any medium from which information can be obtained either directly or, if necessary, after translation, by the responding party into a reasonably usable form or format; or

(B) Any designated tangible thing.

(2) To permit entry upon designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation thereon.

(b) Procedure.

(1) The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons, complaint, Language Assistance Notice, and all other required documents upon that party. The request shall set forth the items to he inspected, copied, tested, or sampled either by individual item or by category, and describe each item and category with reasonable particularity. A party requesting production of electronically stored information may specify the format in which each type of electronically stored information is to be produced. The request shall specify a reasonable time, place, and manner of making the inspection, copy, test, or sample.

(2) The party upon whom the request is served shall serve a written response within forty (40) days after the service of the request, except that a defendant may serve a response within sixty (60) days after service of the summons, complaint, Language Assistance Notice, and all other required documents upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection, copying, testing, or sampling will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified and inspection, copying, testing, or sampling permitted of the remaining parts. Any

response to a request for production of any electronically stored information shall also state, with respect to each item or category in the request:

(A) That inspection, copying, testing, or sampling of the information will be permitted as requested; or

(B) Any objection to the request and the reasons for the objection.

(3) A party who produces documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(4) If a party responding to a request for production of electronically stored information objects to a specified format for producing the information, or if a format is not specified in the request, the responding party shall state in the response the format for production of each type of electronically stored information. Unless the parties otherwise agree or the court otherwise orders:

(A) If a request for production does not specify a format for producing a type of electronically stored information, the responding party shall produce the information in a format in which it is ordinarily maintained or in a format that is reasonably usable; and

(B) A party need not produce the same electronically stored information in more than one format.

(5) The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection, copying, testing, or sampling as requested.

(c) Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

R.I. Super. R. Civ. P. 37

Rule 37. Failure to Make or Cooperate in Discovery: Sanctions.

(a) Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending or, on matters relating to a deposition, in the county in which the deposition is being taken. This provision shall also apply to a deponent who is not a party.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 and 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 34, fails to respond that inspection will be per-

mitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) Evasive or Incomplete Answer or Response. For purposes of this subdivision an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

(4) Expenses and Sanctions.

(A) If the motion is granted or if requested discovery is provided after the motion was filed, the court may, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court

action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust. An order compelling discovery may expressly provide for entry of a final judgment dismissing the underlying claim or entry of a default judgment against the nonmoving party if the order is not complied with within thirty (30) days or such shorter or longer time as the court may order or as the parties may stipulate.

(B) If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under Rule 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the

motion among the parties and persons in a just manner.

(D) Absent exceptional circumstances, the court may not impose sanctions on a party under these rules for failure to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system.

(b) Failure to Comply With Order.

(1) Contempt. If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the court, the refusal may be punished as a contempt of court.

(2) Other Consequences. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) to testify on behalf of a party fails or refuses to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court may make such orders and enter such judgment in regard to the failure or refusal as are just, and among others the following:

(A) An order that the matters regarding which the order was made, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the

disobedient party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or a final judgment dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination; and/or

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in subdivisions (A), (B), and (C) of this subdivision of this rule, unless the party failing to comply shows that the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court may require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other cir-

cumstances make an award of expenses unjust.

(c) Expenses on Refusal to Admit. If a party fails to admit the genuineness of any documents or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making such proof, including reasonable attorney's fees.

The court may make the order unless it finds that:

(1) The request was held objectionable pursuant to Rule 36(a);

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or

(4) There was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails

(1) to appear before the officer who is to take the deposition, after being served with a proper notice, or

(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or

(3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request,

the court on motion may make such orders in regard to the failure as are just, and among others the court may take any action authorized under subparagraph (A), (B) and (C) of subdivision (b)(2) of this rule. Any motion specifying a failure under cause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court may require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has a pending motion for a protective order as provided by Rule 26(c).

R.I. Super. R. Civ. P. 56

Rule 56. Summary Judgment.

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of twenty (20) days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least ten (10) days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, documents, electronically stored information, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered

upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel or a self-represented litigant, shall if practicable ascertain what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but an adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary

judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

R.I. Super. R. Civ. P. 58

Rule 58. Entry of Judgment.

(a) After Trial or Hearing. Subject to the provisions of Rule 54(b):

(1) Upon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith sign and enter the judgment without awaiting any direction by the court; or

(2) Upon a decision by the court granting other relief, or upon a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it.

Every judgment shall be set forth on a separate document. A judgment is effective and shall be deemed entered when so set forth and signed by the clerk. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys and self-represented litigants shall submit forms of judgment upon direction of the court.

(b) By Agreement. Subject to the provisions of Rule 54(b) the clerk, without awaiting any direction by the court, may enter judgment for a sum certain or denying relief upon agreement or submission in writing by the parties or their attorneys of record, except when any party is an infant or incompetent person.

(c) Upon Order of Supreme Court. The clerk shall enter any judgment specifically directed by the Supreme Court.