

No. A-_____

IN THE

Supreme Court of the United States

ROBINSON HELICOPTER COMPANY, INC.,

Applicant,

v.

MINA MCAULIFFE AND THOMAS MCAULIFFE, INDIVIDUALLY
AND AS CO-PERSONAL REPRESENTATIVES
OF THE ESTATE OF RYAN MCAULIFFE, DECEASED,

Respondents.

Application for Extension of Time Within Which
to file a Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

**APPENDIX TO APPLICATION TO
THE HONORABLE ELENA KAGAN
AS CIRCUIT JUSTICE**

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

MIRNA MCAULIFFE and THOMAS
MCAULIFFE, Individually and as Co-
Personal Representatives of the Estate of
Ryan McAuliffe, deceased,

Plaintiffs - Appellants,

v.

ROBINSON HELICOPTER COMPANY, a
California corporation,

Defendant - Appellee.

No. 24-6086

D.C. No.

1:21-cv-00193-HG-WRP

District of Hawaii,

Honolulu

ORDER

Before: McKEOWN, FRIEDLAND, and SUNG, Circuit Judges.

The motions for leave to file an amicus brief filed by Textron, Inc., and the General Aviation Manufacturers Association are **GRANTED**. Dkt. Nos. 38, 40.

Judges Friedland and Sung have voted to deny the petition for rehearing en banc, and Judge McKeown has so recommended. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. 40. The petition for rehearing en banc is **DENIED**. Dkt. No. 37.

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MIRNA MCAULIFFE; THOMAS
MCAULIFFE, Individually and as
Co-Personal Representatives of the
Estate of Ryan McAuliffe, deceased,

Plaintiffs - Appellants,

v.

ROBINSON HELICOPTER
COMPANY,

Defendant - Appellee.

No. 24-6086

D.C. No.
1:21-cv-00193-
HG-WRP

OPINION

Appeal from the United States District Court
for the District of Hawaii
Helen W. Gillmor, District Judge, Presiding

Argued and Submitted October 8, 2025
Submission Vacated November 6, 2025
Resubmitted April 14, 2026
Honolulu, Hawaii

Filed April 21, 2026

Before: M. Margaret McKeown, Michelle T. Friedland, and
Jennifer Sung, Circuit Judges.

Opinion by Judge McKeown;
Partial Dissent by Judge Friedland

SUMMARY*

General Aviation Revitalization Act of 1994

The panel affirmed in part and reversed in part the district court’s summary judgment in favor of Robinson Helicopter Company in plaintiffs’ suit arising out of a helicopter sightseeing crash that killed their daughter, and remanded.

The General Aviation Revitalization Act of 1994 (“GARA”) bars wrongful death actions against general aviation aircraft manufacturers commenced more than eighteen years after the aircraft has been delivered to the first purchaser. The helicopter’s main rotor hub and main rotor blades—the main culprits in the crash—were replaced with identical parts from Robinson in 2018, slightly more than eighteen years after Robinson manufactured the original helicopter.

GARA Section 2(a)(2) (the “rolling provision”) restarts the eighteen-year repose period for newly replaced parts. GARA Section 2(b)(1) (the “fraud exception”) eliminates the repose period where the manufacturer has knowingly misrepresented, concealed, or withheld required

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

and material information from the Federal Aviation Administration.

The panel held that the district court erred in requiring plaintiffs to show that the main rotor hub and main rotor blades had been substantively altered from the original parts in order to get the benefit of the rolling provision. The statute does not require substantive alteration. Because the district court's misinterpretation permeated its causation analysis, the panel remanded for the court to address causation anew.

The panel held that the district court did not err in concluding that plaintiffs failed to make particularized allegations or offer evidence that would permit them to benefit from the fraud exception.

Finally, the panel held that the district court did not abuse its discretion in denying plaintiffs leave to amend their complaint.

Dissenting in part, Judge Friedland joined the majority in concluding that plaintiffs failed to offer evidence of fraud and that the district court did not abuse its discretion in denying plaintiffs' motion to amend their complaint. However, this court has previously interpreted GARA to require that a replacement part have a material alteration before the statute of repose can restart. Because there was no material alteration in the replaced parts here, she would affirm the district court's summary judgment in favor of Robinson Helicopter Company.

COUNSEL

Thomas G. Siracusa (argued) and Joseph A. Power Jr., Power Rogers LLP, Chicago, Illinois; Aimee M. Lum (argued), Mark S. Davis, and Michael K. Livingston, Davis Levin Livingston, Honolulu, Hawaii; for Plaintiffs-Appellants.

Tim A. Goetz (argued) and Cathrine E. Tauscher, Robinson Helicopter Company, Torrance, California; Gary G. Grimmer, GGG Hawaii Law Inc. ALC, Honolulu, Hawaii; for Defendant-Appellee.

OPINION

McKEOWN, Circuit Judge:

The crux of this appeal, which arises out of a fatal helicopter sightseeing crash in Kailua, Hawai‘i, rests on an interpretation of the General Aviation Revitalization Act of 1994 (“GARA”). GARA bars wrongful death actions against general aviation aircraft manufacturers commenced more than eighteen years after the aircraft has been delivered to the first purchaser. GARA §§ 2(a), 3(3), Pub. L. No. 103-298, 108 Stat. 1552 (1994) (codified at 49 U.S.C. § 40101 note). The helicopter’s main rotor hub and main rotor blades—the alleged culprits in the crash—were replaced with identical parts from Robinson Helicopter Company in 2018, slightly more than eighteen years after Robinson manufactured the original helicopter.

There is no dispute that GARA governs the case. This appeal concerns two statutory carveouts. The first is Section

2(a)(2) (“the rolling provision”), which restarts the eighteen-year repose period for newly replaced parts. *Id.* § 2(a)(2). The second is Section 2(b)(1) (“the fraud exception”), which eliminates the repose period where the manufacturer has knowingly misrepresented, concealed, or withheld required and material information from the Federal Aviation Administration (“FAA”). *Id.* § 2(b)(1).

In their negligence and strict liability claims against Robinson, Mirna and Thomas McAuliffe invoked both carveouts in connection with the crash that killed their daughter, Ryan. The district court concluded that neither the rolling provision nor the fraud exception permits the McAuliffes to evade the GARA repose period and granted Robinson’s summary judgment motion.

At summary judgment, the district court required the McAuliffes to show that the main rotor hub and main rotor blades had been substantively altered from the original parts in order to get the benefit of the rolling provision. That interpretation does not comport with the statute’s plain meaning and was thus in error. The statute does not require substantive alteration. Because the district court’s misinterpretation permeated its causation analysis, we remand for the court to address causation anew. The district court did not err, however, in concluding that the McAuliffes failed to make particularized allegations or offer evidence that would permit them to benefit from the fraud exception. Nor did the district court abuse its discretion in denying the McAuliffes’ motion to amend. We therefore affirm in part, reverse in part, and remand.

Background

On the morning of April 29, 2019, the helicopter departed from Honolulu’s Daniel K. Inouye International

Airport for a sightseeing tour. Aboard the helicopter were the pilot, Ryan McAuliffe, and another passenger. During the tour, the helicopter flew into an unstable weather environment, experienced an in-flight breakup, and crashed onto a street in Kailua, Hawai‘i. There were no survivors. The parties dispute the cause of the crash.

Robinson manufactured the helicopter in 2000, more than eighteen years before the incident. It received a certificate of airworthiness on December 7, 2000, and delivered the helicopter to 44 Helicopter, Inc. the next day. The helicopter’s main rotor hub and main rotor blades were replaced with Robinson serialized components on December 14, 2018.

The McAuliffes sued Robinson and other defendants on April 20, 2021, and asserted claims for negligence, strict products liability, and failure to warn under Hawai‘i law. Robinson timely raised the GARA statute of repose defense in its answer. Although the McAuliffes amended their complaint, those amendments did not contain new allegations that would overcome GARA.

In the course of this litigation, the McAuliffes filed four unopposed motions to extend expert and discovery deadlines and to continue the trial date, which the district court granted. After Robinson moved for summary judgment, the McAuliffes sought to amend the scheduling order for purposes of amending the complaint once again.

In opposing the summary judgment motion, the McAuliffes argued that GARA’s eighteen-year repose period restarted as to the “main rotor system, which includes the main rotor hub and blades” because the hub and blades had been replaced only a few months before the crash. The McAuliffes relied on the opinions of three experts in their

claims against Robinson. These experts opined that the main rotor system, both with the original hub and blades and after identical replacements were installed, was too light and resulted in low rotor inertia, pilot overcontrolling, excessive tilting and stress on the teeter stops, and low-G conditions, all of which allegedly contributed to a catastrophic event called mast bumping. Mast bumping occurs when a helicopter's blades diverge from their normal plane of rotation, make contact with the mast, and result in an in-flight breakup. Robinson did not offer up any expert testimony.

Relying on its interpretation of GARA, the district court granted the motion for summary judgment and denied the motion to amend.

Analysis

We review de novo the district court's grant of summary judgment "based upon . . . a disputed construction of [GARA,] a federal statute." *Blazevska v. Raytheon Aircraft Co.*, 522 F.3d 948, 951 (9th Cir. 2008). Applicable to "general aviation aircraft,"¹ GARA "limits aircraft manufacturers' liability to eighteen years after an aircraft is delivered." *Id.* Congress enacted the statute to limit "the long tail of liability" imposed upon general aviation aircraft manufacturers. *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1084

¹ A "general aviation aircraft" is "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] at the time of the accident." GARA § 2(c).

(9th Cir. 2001). GARA’s protections are considerable. We have explained that the statute “acts not just as an affirmative defense, but instead ‘creates an explicit statutory right not to stand trial.’” *Blazevska*, 522 F.3d at 951 (quoting *Est. of Kennedy v. Bell Helicopter Textron, Inc.*, 283 F.3d 1107, 1110 (9th Cir. 2002)).

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 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, 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

GARA § 2.

While considerable, GARA's protections are not absolute. In the statute, Congress created a scheme to permit civil actions against general aviation aircraft manufacturers to proceed to trial in certain rare circumstances: for instance, where the accident was allegedly caused by a new or replaced part (as in the rolling provision), or where a manufacturer has knowingly misrepresented, concealed, or withheld certain material and relevant information from the FAA and thereby caused an accident (as in the fraud exception).

I. The Rolling Provision

GARA's eighteen-year repose 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 Corp.*, 230 F.3d 1155, 1156 (9th Cir. 2000) (quoting GARA § 2(a)(2)). The statute's protections extend "to the manufacturer of the accident aircraft, including the manufacturer of any of its component parts," and irrespective of whether they are two different manufacturers or the same one. *U.S. Aviation Underwriters Inc. v. Nabtesco Corp.*, 697 F.3d 1092, 1098 (9th Cir. 2012) (citation modified).

To satisfy the rolling provision's requirements, the McAuliffes had to show that each of the old main rotor hub and main rotor blades constitutes a "component, system, subassembly, or other part of the aircraft"; that the new main rotor hub and main rotor blades are "new component[s], system[s], subassembl[ies], or other part[s]" that "replace[d]" the old ones; and that the hub and blades caused the accident. GARA § 2(a). The parties agree that the old

and the new main rotor blades and main rotor hub are either “components” or “parts” of the helicopter.² The parties disagree, however, about what it means for one part to have replaced another, and whether the district court correctly concluded that a replacement requires a “substantive alteration” to restart the liability clock.

GARA’s text is clear. The statute applies to “any new component, system, subassembly,”—which is not the case here as there is no new component, system, or subassembly—“*or other part which replaced another component, system, subassembly, or other part*”—which is precisely what happened here. GARA § 2(a)(2) (emphasis added). On its own terms, then, GARA does not require a showing of any degree of alteration, and the district court’s reading of a “substantive alteration” requirement into the statute was legal error.

GARA’s “[l]egislative history confirms our reading of the statute if such confirmation is needed.” *Ctr. for Biological Diversity v. Salazar*, 695 F.3d 893, 903 (9th Cir. 2012). To be sure, Congress enacted GARA out of a concern about excessive tort liability for general aviation aircraft manufacturers. *See General Aviation Revitalization Act of 1993: Hearing on H.R. 3087 Before the Subcomm. on Econ.*

² There initially appeared to be disagreement between the parties about whether the rolling provision extends to the entire main rotor system, or just to the main rotor hub and main rotor blades. In their reply brief, however, the McAuliffes acknowledge that the rolling provision restarts the GARA repose period only as to the “new component, system, subassembly, or other part which replaced another component, system, subassembly, or other part” and which allegedly caused the accident. GARA § 2(a)(2). The repose period therefore does not restart as to the components or parts of the main rotor system that have not been replaced.

& *Com. L.*, 103d Cong. 18 (1994) (statement of Rep. Hamilton Fish) (“The concept of the legislation is reasonable: why should the original manufacturer of an aircraft be held liable *indefinitely* when after many years the product may very well not even contain an original component[?]”). But Congress also wanted to allow certain civil actions against defendants like Robinson to proceed to trial: “Suits clearly may be brought beyond the initial term of . . . 18 years, because that statute of repose begins to run at the time the replacement part is installed.” *Id.* Congress offered up an example that is analogous to the situation here, reasoning that “if the original piston engine is replaced, the new piston engine would have a 15-year statute of repose commencing with its replacement.” H.R. Rep. No. 103–525, pt. II, at 7 (1994).³ The legislative history suggests that the rolling provision helps to dilute GARA’s strong medicine. *Id.* pt. I, at 3 (“[GARA] strikes a fair balance between manufacturers, consumers, and persons injured in aircraft accidents.”). That history also suggests that Congress wrote the word “new” into the rolling provision to clarify that the eighteen-year repose period would not restart when a used part replaces an original part of the aircraft. As the legislation’s chief sponsor in the House of Representatives explained:

There is one small point I would like to clarify with regard to component parts, which

³ An earlier version of GARA contemplated a fifteen-year rather than an eighteen-year repose period. See Jennifer L. Anton, Comment, A Critical Evaluation of the General Aviation Revitalization Act of 1994, 63 J. Air L. & Com. 759, 769 n.78 (1998) (explaining that there is “virtually no legislative history describing the reason for increasing the repose period from 15 to 18 years”).

are covered under the bill. The bill covers new component parts installed as replacements for original components. The component, when newly manufactured, receives the same limitation period as the airplane it is installed on.

For example, a used propeller which has 3 years left on its applicable limitation period would still have only 3 years, if installed in its used condition on a different airplane.

140 Cong. Rec. H14466 (daily ed. June 27, 1994) (statement of Rep. Dan Glickman). The legislative history confirms our conclusion that Congress did not write a substantive alteration requirement into the statute when it added the word “new” into the rolling provision. In GARA, “new” does not mean “substantively different,” and “replaced” means exactly what it says—“replaced.”

We first addressed the rolling provision in *Caldwell*, 230 F.3d at 1156–58. *Calwell* argued that a flight manual, which had been revised within the eighteen-year repose period, “was defective because it did not include a warning that the last two gallons of gasoline in the fuel tanks would not burn.” *Id.* at 1156. We held that such a “revised aircraft manual can fall within GARA’s rolling provision” because it is “a part of the aircraft” and not “a separate product.” *Id.* at 1157. We also cautioned that a “revision to the manual does not implicate GARA’s rolling provision . . . unless the revised part ‘is alleged to have caused [the] death, injury, or damage.’” *Id.* at 1158 (quoting GARA § 2(a)(2)). But the revision, we remarked, must be more than “mere[ly] cosmetic . . . (like changing the manual’s typeface).” *Id.* We concluded that if a defendant “substantively altered, or

deleted, a warning about the fuel system from the manual within the last 18 years, and it is alleged that the revision or omission is the proximate cause of the accident, then GARA does not bar the action.” *Id.* In other words, we held that a modification of a flight manual can constitute a replacement of a part for purposes of the rolling provision.

Our decision in *Caldwell* addressed a distinct question from the one in this appeal. *See id.* at 1157–58. There is no modification at issue here. The question is whether the removal of the old main rotor hub and old main rotor blades and the installation of new ones is a “replace[ment]” within the meaning of GARA. GARA § 2(a)(2). It is hard to conclude that it is anything else.⁴

The district court nonetheless extended the language of *Caldwell* to conclude that there was “no evidence that any replacement part was substantively altered such that the rolling provision of GARA applies.” The court also held that “[i]n design defect cases, the new part or component must substantively alter the aircraft’s design.” Because the McAuliffes did not provide evidence that the new components or parts substantively altered the helicopter’s

⁴ We are not persuaded by our dissenting colleague that “our decision in *Caldwell* requires a different reading.” Dissent at 19. In that case, we decided how much and what kind of change to a “warning about the fuel system” in a “revised flight manual” was needed before the manual could be considered “replaced.” *Caldwell*, 230 F.3d at 1158. The dissent also resolves a question that the parties never asked us to decide. We express no view about what it might mean for an interpretation of GARA to embrace a common law tort principle that treats Robinson differently as an aircraft manufacturer, as opposed to a replacement parts manufacturer. Dissent at 20–21 n.1. Forfeited or not, that position is not one that Robinson advanced, and we decline to address it in the first instance.

design, the court granted Robinson’s motion for summary judgment. Because the statute does not speak of substantive alteration, the district court erred in modifying the rolling provision’s requirements.

The district court then went on to import this “substantive alteration” requirement into the causation analysis: “The replacement of those parts alone is not enough to trigger a new period of repose where the parts themselves were not defective and the design was not substantively altered.” Because this premise is defective, the causation analysis cannot stand. 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, subassembly . . . is alleged to have caused . . . death, injury, or damage.” GARA § 2(a)(2). We have interpreted the causation requirement as one of proximate cause. *Caldwell*, 230 F.3d at 1158. On remand, the district court should address whether the McAuliffes have provided sufficient evidence that the main rotor hub or main rotor blades were the proximate cause of the accident.

II. The Fraud Exception

The fraud exception provides that GARA does not apply where a manufacturer misrepresents, conceals, or withholds certain “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). Immanent in the fraud exception is a particularity requirement. *See Crouch v. Honeywell Int’l, Inc.*, 720 F.3d 333, 344 (6th Cir. 2013) (requiring that a plaintiff “plead

specific facts” to benefit from GARA’s fraud exception). Of course, the complaint also had to conform to the particularity requirements of Federal Rule of Civil Procedure 9(b): “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.”

The McAuliffes failed to allege the elements of the fraud exception with the requisite specificity. Generalized averments that, for example, Robinson “represented that the accident helicopter model and its components and parts were safe for use and non-defective” are not enough to overcome GARA’s significant obstacles. The complaint did not contain any particularized allegations about the “time, place, and specific content of the false representations” to the FAA. *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004) (quoting *Alan Neuman Prods., Inc. v. Albright*, 862 F.2d 1388, 1392–93 (9th Cir. 1989)). Similarly, the McAuliffes’ allegations that Robinson “failed to notify the FAA, the NTSB, [and] other agencies of [the] government . . . that there were defects in the design and/or manufacture of the accident helicopter” put the cart before the horse by requiring Robinson to defeat the merits of the McAuliffes’ negligent misrepresentation claim in order to defeat their fraud exception argument. The complaint also fails to explain how the alleged misrepresentations were “material and relevant” to the performance, maintenance, or operation of the main rotor hub, the main rotor blades, or any other part of the helicopter and critically omits any specific allegations about how any such misrepresentations are “causally related to the harm which the [McAuliffes] allegedly suffered.” GARA § 2(b)(1).

The deficiencies in the McAuliffes’ pleadings were carried over to their presentation at summary judgment. *See*

GARA § 2(b)(1) (requiring that a plaintiff “prove[]” the specific facts alleged). The McAuliffes’ experts conclude summarily and without particular basis that “Robinson misrepresents to the FAA, NTSB, and the public that the sole cause of the R44 in-flight breakups” is pilot error and not the allegedly defective design of the main rotor system. The McAuliffes also contend that Robinson does not maintain its own accident records “[i]n furtherance of its concealment and misrepresentation.” These conclusory allegations are plainly insufficient. Indeed, the record is devoid of any specific evidence about Robinson’s fraud on the FAA or the NTSB. The district court therefore correctly concluded that the McAuliffes failed at the summary judgment stage to present evidence that would satisfy the fraud exception’s requirements.

III. Leave to Amend

The district court did not abuse its discretion when it concluded that the McAuliffes had “not been diligent in pursuing their claim or in seeking to amend [their complaint]” as required under Rules 15 and 16. *See* Fed. R. Civ. P. 15(b), 16(b); *see Wilkins v. United States*, 279 F.3d 782, 785 (9th Cir. 2002) (denial of leave to amend reviewed for abuse of discretion). Nor did the district court abuse its discretion when it concluded that permitting additional amendment would unduly delay the trial and severely prejudice the defendants. *See* Fed. R. Civ. P. 15. That motion came in response to the motion for summary judgment. The entirety of the McAuliffes’ proposed amendments to the complaint sought the benefit of GARA’s fraud exception. But Robinson asserted the GARA defense in its answer in July 2021, more than two and a half years before the McAuliffes sought to amend. From the get-go,

the McAuliffes knew that they had to overcome GARA one way or another, and they did not act diligently in doing so.

AFFIRMED in part, REVERSED in part, and REMANDED.

The parties shall each bear their own costs on appeal.

FRIEDLAND, Circuit Judge, dissenting in part:

I join the majority in concluding that the McAuliffes failed to offer evidence of fraud and that the district court did not abuse its discretion in denying the McAuliffes' motion to amend their Complaint. But our court has previously interpreted the General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552 ("GARA") (codified at 49 U.S.C. § 40101), to require that a replacement part have a material alteration before the statute of repose can restart. *Caldwell v. Enstrom Helicopter Corp.*, 230 F.3d 1155, 1156-58 (9th Cir. 2000). Because there was no material alteration in the replaced parts here, I would affirm the district court's grant of summary judgment in favor of Robinson Helicopter Company ("Robinson").

GARA imposes an 18-year statute of limitations on claims against manufacturers, which are typically tort claims for negligence, design defects, and products liability. GARA §§ 2(a), 3(3). Under Section 2(a)(2) of GARA, however, that period restarts

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.

GARA § 2(a)(2) (emphasis added). The majority contends that the plain meaning of Section 2(a)(2) is clear, requiring only that one part replace another to restart the 18-year statute of repose. But our decision in *Caldwell* requires a different reading.

In *Caldwell*, the plaintiffs sued after a helicopter ran out of usable fuel and crashed, killing the pilot and a passenger. 230 F.3d at 1156. The plaintiffs alleged that the helicopter's flight manual, which had been revised and replaced within the prior 18 years, was defective because it did not warn pilots that the last two gallons of fuel would not burn. *Id.* at 1156-57. Our court concluded that, had a new replacement manual contained only "cosmetic changes (like changing the manual's typeface)," rather than any substantive changes, the GARA repose period would not have restarted. *Id.* at 1158. But we explained that if the defendant had "substantively altered, or deleted, a warning about the fuel system from the manual within the last 18 years, and it [were] alleged that the revision or omission [wa]s the proximate cause of the accident, then GARA [would] not bar the action." *Id.* By holding in *Caldwell* that a replacement manual must be "substantively altered" and not merely that the manual be replaced, we interpreted Section 2(a)(2) of GARA to necessitate more than a mere replacement part—it requires (1) a material change in the part, whether through a

design change or a manufacturing problem, and (2) that the change be a cause of the accident.¹

¹ Our court's reading of GARA in *Caldwell v. Engstrom Helicopter Corp.*, 230 F.3d 1155 (9th Cir. 2000), is also consistent with the common law tort principle that manufacturers of components are not liable for a design defect when they manufacture a component exactly as designed by the manufacturer of, or customer for, the larger product that the component goes into. *See, e.g., S. A. Empresa De Viacao Aerea Rio Grandense (Varig Airlines) v. Walter Kidde & Co., Inc.*, 690 F.2d 1235, 1237-38 (9th Cir. 1982) (holding that a component manufacturer was not liable under a design defect theory where it provided a product to Boeing in accordance with Boeing's specifications); *Thompson v. Hirano Tecseed Co., Ltd.*, 456 F.3d 805, 809-10 (8th Cir. 2006) (collecting cases) (agreeing with "the general rule that a manufacturer is not liable for design defects when it builds a product in accordance with customer specifications").

Because design defect claims generally cannot be brought against component manufacturers that follow the original design regardless of any repose period or lack thereof, the only lawsuits that could proceed against component manufacturers during the 18-year period would be for a manufacturing defect that caused an accident, or a new defective design that caused an accident. As a result, it would make little sense if Section 2(a)(2) of GARA did not require a material alteration before the statute of repose could restart against a component manufacturer. Any lawsuit not alleging a material alteration would already be barred for other reasons, and there is no reason to think that Congress wanted GARA to create potential confusion by restarting a limitations period for a type of claim that typically did not exist at all. *See Comcast Corp. v. Nat'l Ass'n of Afr. Am.-Owned Media*, 589 U.S. 327, 335 (2020) ("[W]e generally presume that Congress legislates against the backdrop of the common law.").

Here, Robinson was both the original manufacturer and the replacement part manufacturer. Robinson is being sued only in its role as the replacement part manufacturer, so it is possible that Robinson could have invoked this tort principle as a defense to the McAuliffes' design defect theory, regardless of the meaning of GARA. Robinson did not raise such a defense, however, so at least for purposes of this appeal,

To succeed on their theory that the statute of repose restarted when Robinson replaced the main rotor hub and main rotor blades, *Caldwell* indicates that the McAuliffes were required to show that those components were materially altered in some way, whether through a new design or a manufacturing defect. It is not sufficient to say that those parts were replaced, just as it would not have been sufficient in *Caldwell* if the flight manual had been replaced with a substantively identical flight manual. Yet the McAuliffes conceded that the replacement rotor hub and rotor blades were identical to the parts they replaced. Under the reading of GARA required by precedent, that means Robinson was entitled to summary judgment.

For the foregoing reasons, I respectfully dissent in part.

the tort principle has been forfeited and does not represent a potential alternative ground for affirmance.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MIRNA MCAULIFFE and THOMAS) CIV. NO. 21-00193 HG-WRP
MCAULIFFE, Individually and as)
Co-Personal Representatives of)
the Estate of RYAN MCAULIFFE,)
deceased,)
)
Plaintiffs,)
)
vs.)
)
ROBINSON HELICOPTER COMPANY,)
INC.; NOVICTOR AVIATION, LLC,)
doing business as Novictor)
Helicopters also known as)
Rainbow Helicopters; UNITED)
HELICOPTER LEASING, LLC;)
THERESITA TERRY BERRIDGE, as)
Personal Representative of the)
Estate of Joseph Gilbert Edward)
Berridge; UNITED STATES OF)
AMERICA; Doe Defendants 1-10,)
)
)
Defendants.)
)

**ORDER GRANTING DEFENDANT ROBINSON HELICOPTER COMPANY, INC.'S
MOTION FOR SUMMARY JUDGMENT (ECF No. 182)**

In 2000, Defendant Robinson Helicopter Company, Inc.
("Defendant Robinson Helicopter") manufactured a R-44 helicopter
bearing serial number 0926 and Registration Number N808NV
("Subject Helicopter").

More than 18 years later, on April 29, 2019, the Subject
Helicopter operated by Defendant Novictor Aviation, LLC crashed
in Kailua, Hawaii, on the island of Oahu. Ryan McAuliffe,

another passenger, and the pilot died as a result of the crash.

Plaintiffs Mirna McAuliffe and Thomas McAuliffe, the parents of the decedent Ryan McAuliffe, filed a First Amended Complaint against Defendant Robinson Helicopter and several other Defendants on behalf of themselves and as the co-personal representatives of the Estate of Ryan McAuliffe.

Plaintiffs assert state law claims for negligence, strict products liability, and failure to warn against Defendant Robinson Helicopter Company, Inc., the manufacturer of the Subject Helicopter.

Defendant Robinson Helicopter moves for summary judgment on all claims against it, relying on the 18-year statute of repose set forth in The General Aviation Revitalization Act of 1994 ("GARA"), Pub.L. No. 103-298, 108 Stat. 1552.

Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment (ECF No. 182) is **GRANTED**.

PROCEDURAL HISTORY

On April 20, 2021, Plaintiffs filed a Complaint. (ECF No. 1).

On July 26, 2021, Defendant Robinson Helicopter Company, Inc. filed an ANSWER. (ECF No. 39). In its Answer, Defendant Robinson Helicopter Company, Inc. raised the defense of the statute of repose found in The General Aviation Revitalization

Act of 1994 ("GARA"), Pub.L. No. 103-298, 108 Stat. 1552. (ECF No. 39 at p. 23).

On January 27, 2022, Plaintiffs filed a FIRST AMENDED COMPLAINT. (ECF No. 79).

On February 20, 2024 Defendant Robinson Helicopter Company, Inc. filed a MOTION FOR SUMMARY JUDGMENT and a CONCISE STATEMENT OF FACTS. (ECF Nos. 182, 183).

On February 22, 2024, the Court issued the briefing schedule for the Motion. (ECF No. 186).

On March 5, 2024, Plaintiffs filed an OPPOSITION and a CONCISE STATEMENT OF FACTS in response to Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment. (ECF Nos. 191, 192).

On March 5, 2024, Defendants Novictor Aviation, LLC also known as Novictor Helicopters and Rainbow Helicopters along with United Helicopter Leasing, LLC filed a STATEMENT OF NO POSITION as to Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment. (ECF No. 189).

On March 7, 2024, Defendant Theresita Terry Berridge as Personal Representative of the Estate of Joseph Gilbert Edward Berridge filed a STATEMENT OF NO POSITION as to Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment. (ECF No. 196).

On March 19, 2024, Defendant Robinson Helicopter Company,

Inc. filed a REPLY and a second CONCISE STATEMENT OF FACTS as to its Motion for Summary Judgment. (ECF Nos. 204, 205).

On April 5, 2024, the Court held a hearing on Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment. (ECF No. 212). The Court issued an oral ruling granting Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment. (Id.) This order provides the written basis for the Court's oral ruling.

BACKGROUND

The Following Facts Are Not In Dispute:

In 2000, Defendant Robinson Helicopter Company, Inc. ("Defendant Robinson Helicopter") manufactured a Robinson R-44 helicopter ("Subject Helicopter") bearing serial number 0926 and Registration Number N808NV. (Affidavit of Peter Riedl, Vice President of Robinson Helicopter Company, Inc., ("Riedl Aff.") at ¶ 3, attached as Ex. 1 to Def.'s CSF, ECF No. 182-1).

On November 29, 2000, Defendant Robinson Helicopter sold the Subject Helicopter to 44 Helicopter, Inc. (Id.)

On December 7, 2000, the Subject Helicopter received a Certificate of Airworthiness from the Federal Aviation Administration ("FAA"). (Federal Aviation Administration Certificate issued on December 7, 2000, for Robinson R-44 Serial Number 0926, attached as Ex. A to Def.'s CSF, ECF No. 182-1).

The Subject Helicopter was a general aviation aircraft. (Id.)

The following day, on December 8, 2000, the Subject Helicopter was delivered to 44 Helicopter, Inc. (Riedl Aff. at ¶ 3, ECF No. 182-1).

Defendant Robinson Helicopter did not possess the Subject Helicopter after it was delivered to 44 Helicopter, Inc. on December 8, 2000. (Id. at ¶ 4). Defendant Robinson Helicopter did not make any changes to the design of the Subject Helicopter after its delivery. (Id.)

On December 14, 2018, more than 18 years after the Subject Helicopter was delivered, the main rotor hub and main rotor blades of the Subject Helicopter were replaced. (Affidavit of Plaintiff's Mechanical Engineering Expert Donald E. Sommer, P.E., ("Sommer Aff.") at ¶ 11, ECF No. 192-1).

On April 29, 2019, the Subject Helicopter departed from the Daniel K. Inouye International Airport in Honolulu for a sightseeing air tour. (National Transportation Safety Board Aviation Accident Factual Report Aviation, NTSB ID: WPR19FA123, attached as Ex. B to Def.'s CSF, ECF No. 182-1).

At approximately 9:10 a.m., the Subject Helicopter crashed causing the death of the pilot and the two passengers. (Id.)

The Parties dispute the cause of the crash.

STANDARD OF REVIEW

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). To defeat summary judgment "there must be sufficient 'evidence that a reasonable jury could return a verdict for the nonmoving party.'" Nidds v. Schindler Elevator Corp., 113 F.3d 912, 916 (9th Cir. 1997) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

The moving party has the initial burden of "identifying for the court the portions of the materials on file that it believes demonstrate the absence of any genuine issue of material fact." T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving party, however, has no burden to negate or disprove matters on which the opponent will have the burden of proof at trial. The moving party need not produce any evidence at all on matters for which it does not have the burden of proof. Celotex, 477 U.S. at 325. The moving party must show, however, that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. That burden is met by pointing out to the district court that there is an absence of evidence to support the nonmoving party's case. Id.

If the moving party meets its burden, then the opposing party may not defeat a motion for summary judgment in the absence of probative evidence tending to support its legal theory.

Commodity Futures Trading Comm'n v. Savage, 611 F.2d 270, 282 (9th Cir. 1979). The opposing party must present admissible evidence showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(c); Brinson v. Linda Rose Joint Venture, 53 F.3d 1044, 1049 (9th Cir. 1995). "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Nidds, 113 F.3d at 916 (quoting Anderson, 477 U.S. at 249-50).

The court views the facts in the light most favorable to the non-moving party. State Farm Fire & Cas. Co. v. Martin, 872 F.2d 319, 320 (9th Cir. 1989). Opposition evidence may consist of declarations, admissions, evidence obtained through discovery, and matters judicially noticed. Fed. R. Civ. P. 56(c); Celotex, 477 U.S. at 324. The opposing party cannot, however, stand on its pleadings or simply assert that it will be able to discredit the movant's evidence at trial. Fed. R. Civ. P. 56(e); T.W. Elec. Serv., 809 F.2d at 630. The opposing party cannot rest on mere allegations or denials. Fed. R. Civ. P. 56(e); Gasaway v. Northwestern Mut. Life Ins. Co., 26 F.3d 957, 959-60 (9th Cir. 1994). "When the nonmoving party relies only on its own affidavits to oppose summary judgment, it cannot rely on

conclusory allegations unsupported by factual data to create an issue of material fact.” Hansen v. U.S., 7 F.3d 137, 138 (9th Cir. 1993); see also Nat’l Steel Corp. v. Golden Eagle Ins. Co., 121 F.3d 496, 502 (9th Cir. 1997).

ANALYSIS

The General Aviation Revitalization Act of 1994 (“GARA”), Pub.L. No. 103 298, 108 Stat. 1552, (codified as a note to 49 U.S.C. § 40101 Notes), is a statute of repose that limits liability of aircraft manufacturers of general aviation aircraft. Blazevska v. Raytheon Aircraft Co., 522 F.3d 948, 951 (9th Cir. 2008).

STATUTE TEXT OF GARA

GARA provides, as follows:

- (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, 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.

GARA § 2(a)-(b), PL 103-298, August 17, 1994, 108 Stat 1552.

POLICY OF GARA'S STATUTE OF REPOSE

Congress enacted GARA to limit the "long tail of liability" imposed upon manufacturers of general aviation aircraft. Lyon v. Agusta S.P.A., 252 F.3d 1078, 1084 (9th Cir. 2001) (citing H.R. Rep. No. 103-525, pt. I, at 1-4 (1994)), reprinted in 1994 U.S.C.C.A.N. 1638, 1638-41). Congress passed the law because it was "deeply concerned about the enormous product liability costs" suffered by aircraft manufacturers. Id.

GARA's statute of repose generally bars suits against aircraft manufacturers stemming from aircraft accidents that occur more than 18 years after the initial transfer of an aircraft by the manufacturer. Est. of Kennedy v. Bell Helicopter Textron, Inc., 283 F.3d 1107, 1111 (9th Cir. 2002).

Courts in the Ninth Circuit regularly enforce GARA's statute of repose to bar suits against aircraft manufacturers brought more than 18 years after the delivery of the aircraft. See Altseimer v. Bell Helicopter Textron Inc., 919 F.Supp.340, 342 (E.D. Cal. 1996) (finding plaintiff's claims were barred by GARA's statute of repose); Brewer v. Dodson Aviation, 2006 WL 3231974, *8 (W.D. Wash. Nov. 7, 2006) (same), aff'd Brewer v.

Parken Hannifin Inc., 298 Fed. Appx. 582, 583 (9th Cir. 2008).

GARA's statute of repose acts not just as an affirmative defense but instead "creates an explicit statutory right not to stand trial" for aircraft manufacturers. Blazevska, 522 F.3d at 951 (quoting Est. of Kennedy, 283 F.3d at 1110).

Here, there is no dispute that the Subject Helicopter was a general aviation aircraft that was delivered on December 8, 2000.

There is also no dispute that the April 29, 2019 accident occurred more than 18 years after the initial transfer of the aircraft in December 2000.

GARA's statute of repose precludes any claim against Defendant Robinson Helicopter unless an exception to the statute of repose applies.

I. Exceptions to GARA At Issue Here

There are two main exceptions to GARA at issue in this case. The First exception to GARA is its **Rolling Provision**:

Pursuant to Section 2(a)(2) of GARA, the 18-year limitations period restarts in certain circumstances following the aircraft's initial delivery where there is the replacement or addition of a 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 the accident. GARA § 2(a)(2).

A. The Rolling Provision of GARA

There are two aspects of the rolling provision that are required to be proven in order to restart the limitations period of GARA: (1) it has to be a new component or part that has been substantively altered from the original; and (2) the new substantively altered part or component has to be the cause of the accident. GARA § 2(a)(2).

There is no dispute that more than 18 years have passed following the initial transfer of the Subject Helicopter that crashed in this case. The Subject Helicopter was delivered by the manufacturer, Defendant Robinson Helicopters, on December 8, 2000. The accident in this case took place more than 18 years later on April 29, 2019.

The Parties dispute whether the rolling provision of GARA applies to restart the limitations period following the December 8, 2000 initial delivery. Plaintiffs argue that the GARA statute of repose should not be calculated from December 8, 2000, when the helicopter was initially delivered. Rather, Plaintiffs argue that pursuant to the rolling provision of GARA in Section 2(a)(2), the limitations period restarted on December 14, 2018, when the main rotor hub and main rotor blades on the Subject Helicopter were replaced.

Pursuant to GARA in Section 2(a)(2), the addition of a new

component or part, in certain instances, may start a new 18-year period of repose running from the date of completion of the addition of that part of the aircraft. Lyon, 252 F.3d at 1088. The change made by the new component or part, however, must have substantively altered the original aircraft and must have been the cause of the crash in order for the rolling provision exception to apply. Caldwell v. Enstrom Helicopter Corp., 230 F.3d 1155, 1158 (9th Cir. 2000).

1. In Design Defect Cases, The New Part Or Component Must Substantively Alter The Aircraft's Design

Installation of a new or replacement part alone does not automatically trigger the rolling provision of GARA. Caldwell, 230 F.3d at 1158.

Here, there is no evidence that any replacement part was substantively altered such that the rolling provision of GARA applies. There is no evidence that there was a change in design of the main rotor system following the initial delivery of the Subject Helicopter.

Mere replacement of component parts is insufficient to trigger the rolling provision of GARA. Automatically extending the limitations term each time a part or component is replaced is contrary to both the text and the policy of the statute. "If every time a critical component was overhauled, or even replaced, the statute of repose began anew thus permitting an individual to

sue for a design flaw, then the manufacturer of the aircraft would never be afforded the protection of the statute of repose.” Robinson v. Hartzell Propeller Inc., 326 F.Supp.2d 631, 663 (E.D. Pa. 2004) (quoting Butchkosky v. Enstrom Helicopter Corp., 855 F.Supp. 1251 (S.D. Fla. 1993)).

The Ninth Circuit Court of Appeals has ruled that in order for a new 18-year limitations period to be triggered by the addition of a new or replacement component or part, the component or part must be “substantively altered” from the previous component or part. Caldwell, 230 F.3d at 1158; see Holliday v. Extex, 457 F.Supp.2d 1112, 1119 (D. Haw. 2006).

In design defect cases, such as here, the design of the aircraft must have been substantively altered in order for the rolling provision exception to GARA’s statute of repose to apply.

In LaHaye v. Galvin Flying Service, Inc., 144 Fed. Appx. 631, 633-34 (9th Cir. Aug. 9, 2005), the plaintiff brought a products liability claim against an aircraft manufacturer based on a design defect of a part that was replaced within 18-years of the aircraft’s accident. Id. The plaintiff challenged the design of the aircraft, asserting that “the design of the trim actuator was defective because it required a mechanic to place the dust cover over the assembly before inserting the tire rod through the jackscrew eyelets.” Id. at 633.

The district court ruled that GARA’s statute of repose

barred the plaintiff's claim because although certain components of the allegedly defectively designed trim actuator were recently replaced before the accident, the original design, which occurred more than 18 years prior to the accident, did not change and therefore did not trigger a new limitations period. Id.

The plaintiff in LaHaye appealed the ruling to the Ninth Circuit Court of Appeals. The Appellate Court agreed with the district court. Id. Relying on its prior published decision in Caldwell v. Enstrom Helicopter Corp., 230 F.3d 1155, 1158 (9th Cir. 2000), the Ninth Circuit Court of Appeals ruled that a new limitations period pursuant to GARA only applies where there has been a substantive alteration to the part that was alleged to have proximately caused the accident. LaHaye, 144 Fed. Appx. at 633-34.

The Ninth Circuit Court of Appeals reasoned in LaHaye that when a plaintiff's claim is based on a design defect, the plaintiff must demonstrate that the design of the product was new or substantively revised in order to trigger a new limitations period under GARA. Id. The Appellate Court upheld the district court's ruling that "the replacement of certain components of the trim actuator...did not change the allegedly defective aspect of the trim actuator's design" and did not warrant a new 18-year limitations period under GARA § 2(a)(2). Id.

Here, Plaintiffs' claim is that the original design of the

main rotor system, which was delivered in December 2000, caused the crash. (First Amended Complaint at ¶¶ 58-59, ECF No. 79). Plaintiffs' Opposition acknowledges that their theory of the case is premised on the "defectively designed main rotor system." (Pl.'s Opp. at pp. 7-8, ECF No. 191). Just as in LaHaye, the design in this case did not change within the 18-year statute of repose period. The rolling provision of GARA does not apply here because the original design of the Subject Helicopter was not altered or revised within the 18-year repose period. Mere replacement of component parts in the Subject Helicopter does not trigger a new limitations period because the designs of the replacement parts were not substantively altered.

Plaintiffs acknowledge that their case is premised on a design defect and not a manufacturing defect. Plaintiffs' claim is that the design was flawed and the design caused the crash, not a defect in manufacturing of a replacement part. (See Sommer Aff. at ¶¶ 10-12, ECF No. 192-1; Expert Report of Donald Sommer, attached as Ex. B to Pl.'s CSF in Opp. ("Sommer Report") at pp. 5-9, 25-26, ECF No. 192-3; Affidavit of E. Bruce Hunt at ¶ 4, attached to Pl.'s CSF in Opp., ECF No. 192-8; Expert Report of E. Bruce Hunt Report attached to Pl.'s CSF in Opp., ("Hunt Report") at pp. 11, 23, attached to Pl.'s CSF in Opp., ECF No. 192-10; Expert Report of Rodney Doss ("Doss Report") at pp. 15-16, ECF No. 192-12).

GARA's rolling provision does not apply in a design defect case where there is no evidence that the design was altered within the 18-year statute of repose. LaHaye, 144 Fed. Appx. at 633-34; Caldwell, 230 F.3d at 1158. Plaintiffs have not provided any evidence to demonstrate that a new component or part substantively altered the Subject Helicopter's design in order to trigger a new limitations period under GARA. See Specter v. Texas Turbine Conversions, Inc., 519 F.Supp.3d 576, 587 (D. Alaska 2021).

2. There Is No Evidence That Any Change In A Replacement Part Caused The Accident In This Case That Would Trigger The Rolling Provision To Apply

Pursuant to Section 2(a)(2) of GARA, the rolling provision is triggered only where the replacement part is a substantial factor in causing the accident. 49 U.S.C.A. § 40101, Note, § 2(a)(2); Caldwell, 230 F.3d at 1156-57; see Theobald v. Piper Aircraft, Inc., 309 F.Supp.3d 1253, 1266 (S.D. Fla. 2018). The revision itself must be the proximate cause of the accident in order for the rolling provision exception to apply. Caldwell, 230 F.3d at 1158.

In this case, Plaintiffs' experts each allege that the original design of the main rotor system was a substantial factor in causing the subject accident. Plaintiffs do not proffer any evidence that the April 29, 2019 accident was caused by

alterations made in the replacement parts. Plaintiffs do not argue that the main rotor hub or the blades were different from the original design, that they were manufactured defectively, or that a revision in the replacement parts caused the crash.

The replacement of those parts alone is not enough to trigger a new period of repose where the parts themselves were not defective and the design was not substantively altered. Caldwell, 230 F.3d at 1158. The policy of the statute of repose in GARA is to protect manufacturers from liability after the 18-year time period. Id. Only a revision or substantive alteration in the new component which is responsible for the crash allows for a new limitations term to apply. Id.

Just as in LaHaye, the rolling provision of GARA does not apply in a design defect case, such as here, if there was no change to the design of the aircraft within the 18-year statute of repose. The mere replacement of parts or components in the Subject Helicopter does not trigger GARA's rolling provision. LaHaye, 144 Fed. Appx. at 633; Theobald, 309 F.Supp.3d at 1266; Robinson, 326 F.Supp.2d at 663.

Second, GARA's **Knowing Misrepresentation Or Concealment Provision**:

Pursuant to Section 2(b)(1), GARA's statute of repose does not bar suit where the manufacturer 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 maintenance or operation of such aircraft or the part produced by the manufacturer. GARA § 2(b)(1).

The purportedly misrepresented or concealed information must be causally related to the harm which the claimant allegedly suffered in order for the exception to apply. Id.

B. In Order To Defeat The Motion For Summary Judgment, Plaintiffs Must Both Plead And Prove The Knowing Misrepresentation Or Concealment Provision of GARA

In order to establish an exception to GARA's statute of repose based on knowing misrepresentations or concealment to the Federal Aviation Administration, Plaintiffs must both (1) plead the knowing misrepresentation claim and (2) prove the claim. 49 U.S.C. § 40101 Notes, § 2(b)(1).

GARA sets forth the requirement as follows:

[I]f 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 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

49 U.S.C. § 40101 Notes, § 2(b)(1).

1. Plaintiffs' First Amended Complaint Did Not Plead Any Facts To Establish Knowing Misrepresentation Or Concealment By Defendant Robinson Helicopter

The pleading requirement in Section 2(b)(1) of GARA mirrors Federal Rule of Civil Procedure 9(b) which requires that parties plead claims sounding in fraud with particularity under a heightened pleading standard. Croman Corp. v. Gen. Elec. Co., 2006 WL 3201099, at *6 (E.D. Cal. Nov. 2, 2006) (citing Rickert v. Mitsubshi Heavy Industries, Ltd., 923 F.Supp. 1453, 1456 (D. Wyo. 1996)); Clark v. PHI, Inc., 2012 WL 3065429, *5 (E.D. La. July 27, 2012).

To satisfy Rule 9(b), a pleading must identify the "who, what, when, where, and how of the misconduct charged." Cafasso, United States ex rel. v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 (9th Cir. 2011). Just as with claims of fraud, knowing misrepresentation or concealment claims must include the specific content of the false misrepresentations as well as the identities of those making and receiving the misrepresentations. See Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007).

Plaintiffs' First Amended Complaint does not state a claim for knowing misrepresentation, concealment, or withholding of information from the Federal Aviation Administration pursuant to Section 2(b)(1) of GARA. (See First Amended Complaint, ECF No. 79). The First Amended Complaint pleads only a claim for

Negligent Misrepresentation. Such a claim is insufficient to state an exception to GARA's statute of repose in Section 2(b)(1). Crouch v. Honeywell Int'l Inc., 720 F.3d 333, 344 (6th Cir. 2013).

Plaintiffs have not "plead *specific* facts, as required by § 2(b)(1), to support a claim that [the aircraft manufacturer] was responsible for knowing misrepresentation, concealment, or withholding of required information." Id.; see also Croman Corp., 2006 WL 3201099, at *6; Clark, 2012 WL 3065429, at *5.

In a separate Order, the Court denied Plaintiffs' Motion to file a Second Amended Complaint in which Plaintiff failed to plead a knowing misrepresentation and concealment claim pursuant to GARA.

2. Plaintiffs Have Not Presented Any Evidence To Establish Knowing Misrepresentation Or Concealment By Defendant Robinson Helicopter That Would Be Required To Defeat The Motion For Summary Judgment

Even if Plaintiffs had properly pled a knowing misrepresentation or concealment claim, at the summary judgment stage, the Court construes the record in Plaintiffs' favor and there is nothing to warrant an exception to the statute of repose pursuant to Section 2(b)(1) of GARA. Plaintiffs have not provided evidence necessary to establish any knowing misrepresentation or concealment by Defendant Robinson Helicopter that would provide an exception to the statute of repose.

In support of their knowing misrepresentation or concealment theory, Plaintiffs rely on three experts. Plaintiffs do not point to any other evidence in support of their knowing misrepresentation or concealment claim.

None of Plaintiffs' three experts (Donald Sommer, P.E., Bruce Hunt, and Rodney Doss) point to a single instance with any specificity where any named officer, director, partner, or agent of Defendant Robinson Helicopter Company, Inc. had actual knowledge of a design defect of its R-44 helicopter and either misrepresented the information to or concealed it from the Federal Aviation Administration. (See Sommer Affidavit, ECF No. 192-1; Sommer Report, ECF No. 192-3; Hunt Affidavit, ECF No. 192-8; Hunt Report, ECF No. 192-10; Doss Report, ECF No. 192-12).

Plaintiffs do not identify any evidence which shows Defendant Robinson Helicopter was made aware of a design defect and did not report it to the Federal Aviation Administration. Additionally, Plaintiffs fail to identify any false statement that Defendant Robinson Helicopter made to the Federal Aviation Administration.

Each of Plaintiffs' experts state in general terms that they believe there has been a long history of R-44 crashes due to mast bumping. None of the experts, however, have cited to any evidence that Defendant Robinson Helicopter officers, directors, partners, or agents knew that its R-44 helicopter design was

determined to be the cause of these unspecified accidents and had made misrepresentations about it. The reports merely make conclusory allegations without providing any evidentiary basis. See Theobald, 309 F.Supp.3d at 1262-63.

There is no reference to any other evidence that Defendant Robinson Helicopter's personnel knowingly misrepresented or concealed required information from the Federal Aviation Administration following these purported accidents where the design was allegedly the cause of the crashes. (See Sommer Expert Report at p. 5, attached as Ex. B to Pl.'s CSF in Opp., ECF No. 192-3; Hunt Affidavit at pp. 2-3, ECF No. 192-8; Doss Report attached as Ex. A, ECF No. 192-12).

Plaintiffs' three expert reports and affidavits do not provide information to support Plaintiffs' claims. They fail to demonstrate that Defendant Robinson Helicopter engaged in knowing misrepresentation or concealment in its communications with the Federal Aviation Administration that would support a Section 2(b)(1) exception under GARA. See Theobald, 309 F.Supp.3d at 1262-63.

Expert assertions in affidavits, absent personal knowledge or supporting evidence, are speculative and inadmissible. Smith v. Pac. Bell Tel. Co., Inc., 649 F.Supp.2d 1073, 1091 (E.D. Cal. 2009). There are no citations to any findings by the National Transportation Safety Board that the R-44 crashes were caused

solely by the design of the helicopter and that Defendant told the Federal Aviation Administration otherwise. Plaintiffs' expert reports do not cite to a single example of Defendant Robinson or its agents making any misrepresentation about the R-44 crashes or concealing any information about those crashes.

Plaintiffs' general view that Defendant Robinson should have known or somehow had constructive knowledge of a design defect and should have made changes to its design is insufficient to support a knowing misrepresentation or concealment claim pursuant to GARA. Theobald, 309 F.Supp.3d at 1260.

The knowing misrepresentation or concealment exception to GARA's statute of repose does not apply as Plaintiffs have failed to provide sufficient allegations and evidentiary support for it as required by the statute. 49 U.S.C. § 40101 Notes, § 2(b)(1) (explaining that an exception for GARA for knowing misrepresentation only applies if a plaintiff both "pleads" and "proves" such a claim).

II. GARA's Statute Of Repose Bars Plaintiffs' Claims Against Defendant Robinson Helicopter Company, Inc.

The Parties agree that the Subject Helicopter was a general aviation aircraft as defined by GARA.

There is no dispute that more than 18 years passed from the December 8, 2000 delivery of the Subject Helicopter to the April 29, 2019 accident.

As explained above, neither of the exceptions to GARA's statute of repose relied upon by Plaintiffs apply in this case.

First, GARA's rolling provision exception does not apply. The mere replacement of components does not trigger a new limitations period under GARA. Plaintiffs' design defect claim is barred because there is no evidence that the design of the Subject Helicopter was altered within the 18-year statute of repose. LaHaye, 144 Fed. Appx. at 633-34; Caldwell, 230 F.3d at 1158. Plaintiffs have not provided any evidence to demonstrate that any alteration to a replacement part was the cause of the accident that would allow for an exception to the statute of repose. LaHaye, 144 Fed. Appx. at 633-34.

Second, the knowing misrepresentation or concealment exception to GARA's statute of repose does not apply. Plaintiffs have failed to both plead and provide an evidentiary basis for such an exception as required by the statute. 49 U.S.C. § 40101 Notes, § 2(b)(1); Crouch, 720 F.3d at 344; Theobald, 309 F.Supp.3d at 1262-63.

Plaintiffs' claims against Defendant Robinson Helicopter are barred by GARA's 18-year statute of repose. LaHaye, 144 Fed. Appx. at 633; see Altseimer, 919 F.Supp. at 342; Brewer, 298 Fed. Appx. at 583.

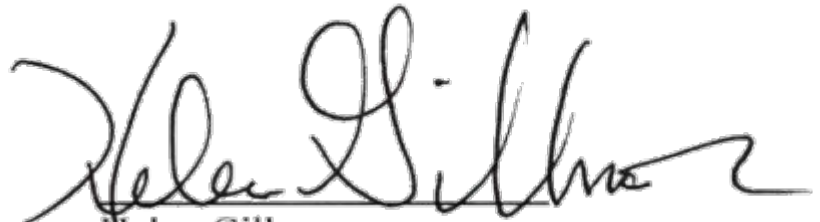
CONCLUSION

Defendant Robinson Helicopter Company, Inc.'s Motion for Summary Judgment (ECF No. 182) is **GRANTED**.

IT IS SO ORDERED.

Dated: May 6, 2024, Honolulu, Hawaii.




Helen Gillmor
United States District Judge

Mirna McAuliffe and Thomas McAuliffe, Individually and as Co-Personal Representative of the Estate of Ryan McAuliffe, deceased v. Robinson Helicopter Company, Inc.; Novictor Aviation, LLC, dba Novictor Helicopter, dba Rainbow Helicopters; United Helicopter Leasing, LLC; Theresita Terry Berridge, as Personal Representative of the Estate of Joseph Gilbert Berridge; United States of America; Doe Defendants 1-10, Civ. No. 21-00193 HG-WRP;
ORDER GRANTING DEFENDANT ROBINSON HELICOPTER COMPANY, INC'S MOTION FOR SUMMARY JUDGMENT (ECF No. 182)