

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 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

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-2015-4900, 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).

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.*

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.

A

Engine

The Aircraft was powered by a single Lycoming IO-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, N.A.*, 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 repose³ 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. 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—

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).

“(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

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).

(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 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-rotation⁵ 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, LLC*, 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.

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.

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 separate 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)).

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 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

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

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 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.

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.)

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 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.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Carol Williams, et al. v. Avco Corporation

CASE NO: PC-2015-4900

COURT: Providence County Superior Court

DATE DECISION FILED: January 3, 2024

JUSTICE/MAGISTRATE: Licht, J.

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