

Stat. 1552 (codified at 49 U.S.C. § 40101) (GARA). Plaintiffs object to Avco's motion. For the reasons stated herein, Defendant's Motion for Partial Summary Judgment is granted.

I

Facts and Travel

On November 13, 2012, Anthony David Williams, William Clayton Young, and John Tilton, Jr. (Decedents) boarded a Piper PA-32-300 Cherokee 6 Aircraft (Aircraft) at Hawkins Field in Jackson, Mississippi to attend a Federal Aviation Administration (FAA) safety seminar in Raymond, Mississippi. (Def.'s Mot. Ex. 2 (NTSB Factual Report), at 1-3.) 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.*

Plaintiffs filed their initial Complaint¹ 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 GARA as a defense. *See* Defendant's Answer (Def.'s Answer.) On May

¹ This Court has been advised that originally Plaintiffs brought suit in Mississippi but their complaint against Avco was dismissed for lack of jurisdiction.

29, 2020, Plaintiffs submitted an Amended Complaint indicating that they intended to rely on exceptions set forth in GARA.² See Amended Complaint (Am. Compl.)

On July 8, 2021, this Court decided two discovery motions, one filed by each party. *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 exhaust valves of cylinders four and six) of the engine that could have contributed to its failure. *Id.* at *3. Therefore, this Court held that, to the extent that Plaintiffs have identified specific parts that allegedly caused the accident, Plaintiffs should be allowed to conduct discovery to determine whether those parts fall under GARA's Rolling Provision which will be described below. *Id.* at *7.

The parties engaged in fact discovery, and Avco now moves for partial summary judgment on all counts of the Amended Complaint to the extent their theories of liability are premised on (a) a cracked fuel servo bellows, (b) a loose plunger in the flow divider, and (c) a lack of an overboard line.³ (Def.'s Mem. of Law in Supp. of Mot. for Partial Summ. J. (Def.'s Mem.) 1.) This Court heard arguments on November 14 and 15, 2023. During argument, Plaintiffs conceded that the fuel servo bellows were not causative of the accident. Therefore, the only issues left for this Court to address relate to the flow divider of the fuel system and the lack of an overboard line.

² Plaintiffs have asserted reliance on provisions and exceptions set forth in GARA. This Court will provide a more comprehensive explanation of the Rolling Provision and the Fraud Exception set forth in GARA in subsequent portions of this Decision.

³ At oral argument, Avco's counsel conceded that Plaintiffs' claims concerning the exhaust valves of cylinders four and six are not barred by GARA.

A

The 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. (Def.'s Mot. Ex. 8 (Production Certificate).) Avco manufactured and shipped the Engine to Piper Aircraft Corporation (Piper) in Florida on October 5, 1972. (Def.'s Mot. Ex. 9 (Engine Record).) Subsequently, Piper installed the Engine on a Piper PA 32-300 Cherokee Six and put it into service. (Def.'s Mot. Ex. 10 (Aircraft Logbook #2), at P001084.) In May 2009, Superior Pallet Co. purchased the Aircraft. (Def.'s Mot. Ex. 3 (Latham Dep.), at 24:12-20, Oct. 15, 2021.)

1

Flow Divider

A flow divider sits on top of the Engine and distributes metered fuel to each of the six cylinders. (Pls.' Opp'n Ex. A (Rupert Dep.), at 111:1-4, Sept. 18, 2023.) It consists of a valve body and several internal sub-components including a plunger valve, a spring, and a flexible diaphragm. *See id.* at 111-13.

According to the Aircraft's engine logbook, the Engine was first overhauled in 1983 by Florida Aircraft Engines. (Def.'s Mot. Ex. 11 (Engine Logbook #1), at P000717-720.) An engine overhaul consists of deconstructing the current engine by an authorized facility that can inspect, test, and repair the engine as necessary. (Rupert Dep. at 63:7-14.) As part of the overhaul, the flow divider was sent to Quality Aircraft Carburetors, Inc. (Quality Aircraft). (Engine Logbook #1 at P000777.) Quality Aircraft's service tag indicated the flow divider's manufacturer as Bendix and recorded its serial number as 961N. *Id.*

In 2004, Mena Aircraft Engines, Inc. (Mena Aircraft Engines) overhauled the flow divider. Mena Aircraft Engines outsourced the work on the flow divider to Mike's Aircraft Fuel Metering Service (Mike's Fuel Metering). (Def.'s Mot. Ex. 16 (Mike's Fuel Metering Work Order), at P006553, P006566-67.) Mike's Fuel Metering's service tag also indicated the flow divider's manufacturer as Bendix and recorded its serial number as 961N. *Id.* During the overhaul, Mike's Fuel Metering replaced the flow divider's diaphragm. *See id.*; *see also* Def.'s Mem. at 9.

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).

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).

III

Analysis

A

GARA

In 1994, Congress passed GARA in response to the “deterioration in aircraft manufacturing” and the “concomitant loss of jobs” in the general aviation industry. Scott David Smith, *The General Aviation Revitalization Act of 1994: The Initial Necessity for, Outright Success of, and Continued Need for the Act to Maintain American General Aviation Predominance Throughout the World*, 34 Okla. City U. L. Rev. 75, 77 (2009). An examination of the legislative history confirms that GARA was enacted to address issues arising from the substantial increase in successful product liability claims imposed on manufacturers of general aviation aircraft. *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1084 (9th Cir. 2001), *as amended* (July 9, 2001) (citation to legislative history omitted). Congress believed that “manufacturers were being driven to the wall because, among other things, of the long tail of liability attached to those aircraft[s], which could be used for decades after they were first manufactured and sold.” *Id.* Therefore, GARA was designed to strike a fair balance between potential plaintiffs in the aftermath of an accident and manufacturers of general aviation, alleviating them from enormous product liability costs. *Burroughs v. Precision Airmotive Corp.*, 78 Cal. App. 4th 681, 691 (Cal. Ct. App. 2000) (quoting GARA, H.R. No. 103-525(II), 103 Cong., 2d sess. (1994), at 1648).

GARA establishes a “statute of repose⁴ 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—

“(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

⁴ 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).

not apply.⁵ Relevant to this matter are the rolling provision for new parts (the Rolling Provision) and the Fraud Exception.

1

GARA's Burden of Proof

It is Plaintiffs' position that Section (a)(2), or the Rolling Provision, is a separate limitations period under which a defendant has the burden of proof. (Mem. of Law in Supp. of Pls.' Resp. in Opp'n to Mot. for Partial Summ. J. (Pls.' Opp'n) at 22.) Plaintiffs point to *Estate of Glover v. American Resource Corp.*, No. 163673, 1996 WL 33484136 (Cal. Super. Ct. Sept. 13, 1996), in support of their argument. In *Glover*, the California Superior Court held that the defendants failed to meet its burden because it did not show that "it did not replace any 'component, system, subassembly, or other part' which caused the crash" and thus triggering GARA's protection. *Estate of Glover*, 1996 WL 33484136, at *2. The court reasoned that a defendant has the "initial burden in order to show that the period of repose in GARA bars this action." *Id.* at *4.

Glover is the only case Plaintiffs cite to support their argument. Pls.' Opp'n at 22. However, the weight of authority holds otherwise. "GARA acts as an affirmative defense and 'creates an explicit statutory right not to stand trial.'" *Hetzer-Young v. Precision Airmotive Corp.*, 921 N.E.2d 683, 691 (Ohio Ct. App. 2009) (internal quotation omitted). Once a defendant shows that GARA's statute of repose applies, then the plaintiff has the burden to show facts that would operate to toll or create an exception to the repose period or create an exception. *See Willett v. Cessna Aircraft Co.*, 851 N.E.2d 626, 635 (Ill. App. Ct. 2006); *Moore v. Hawker Beechcraft Corp.*,

⁵ 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).

No. N09C-12-010MMJ, 2011 WL 6400670, at *9 (Del. Super. Ct. Dec. 15, 2011), *aff'd*, 74 A.3d 654 (Del. 2013); *Lunn v. Hawker Beechcraft Corporation*, 417 P.3d 1206, 1209 (Okla. Civ. App. 2017). In other words, Avco bears the initial burden of demonstrating that Plaintiffs' suit is barred by GARA. *See id.* If Avco satisfies this initial burden, the burden then shifts to Plaintiffs to set forth facts to show that the Rolling Provision or the Fraud Exception apply. *See id.* Avco has established that the Lycoming engine was manufactured and installed in the plane more than eighteen years before the accident. Thus, Avco has met its burden because GARA applies. The burden has shifted to Plaintiffs.

i

The Rolling Provision

GARA is a "rolling" statute of repose. *Burroughs*, 78 Cal. App. 4th at 691. 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*, 2011 WL 6400670, at *8. 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 [a]ircraft 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.*

a

Interpretation of "Manufacturer"

Plaintiffs contend that if a new part is replaced within eighteen years of the accident and that part caused the accident, the Rolling Provision applies to the original manufacturer of the engine as well as the manufacturer of the new part. Pls.' Opp'n at 25-27. Such an interpretation would totally frustrate the intent of GARA. Moreover, Plaintiffs point to no case law that supports

such a contention.⁶ The published case law supports the contrary interpretation that only the manufacturer of the replacement part that caused the accident is liable.

The term “manufacturer” is not defined in GARA. *Pridgen v. Parker Hannifin Corp.*, 905 A.2d 422 (Pa. 2006), adhered to on reargument, 916 A.2d 619 (Pa. 2007). Thus, “it is appropriate to consider the underlying Congressional policy and legislative history in construing the statute.” *Pridgen*, 905 A.2d at 435. The legislative history and case law make it reasonably plain that “only the *actual* manufacturer or seller of the replacement part can be held liable” under Section (a)(2) of GARA. *Moore*, 2011 WL 6400670, at *10; *Sheesley v. Cessna Aircraft Co.*, No. 02-4185-KES 2006 WL 1084103, at *4 (D.S.D. Apr. 20, 2006); *Hinkle v. Cessna Aircraft Co.*, No. 247099, 2004 WL 2413768, at *8 (Mich. Ct. App. Oct. 28, 2004); *Williams*, 2021 WL 2946198, at *6 (“Of note, courts have held that based on the legislative history of GARA, [the Rolling Provision] only applies against the manufacturer of the new component part installed after delivery as opposed to the original manufacturer of the aircraft.”). Stated differently, “one cannot try to hold the manufacturer of the whole aircraft liable for a new part but rather, the action must be against the manufacturer of the new part directly.” *Williams*, 2021 WL 2946198, at *6.

Plaintiffs also contend that, because Avco is the FAA Type Certificate holder and the flow divider has a Lycoming part number, Avco is responsible as a “manufacturer” of the flow divider. Pls.’ Opp’n at 6-7. It is Plaintiffs’ position that the “plain language of” GARA “is silent as to

⁶ Plaintiffs cite one case to support their argument, *Lowery v. Neff*, No. 06-000840 (Fla. Cir. Ct.). There is no published decision in this case. While Plaintiffs provided a transcript of the oral argument on summary judgment in this case and pointed to language in that transcript where the court denied summary judgment, this Court cannot glean that that trial judge interpreted GARA differently. He merely said, “I believe there’s some evidence that these items were manufactured or caused to be manufactured in the definition that is given by the FAA.” Hr’g Tr. 157:11-14, Aug. 24, 2009.

whom it does and does not apply and that silence means it applies to anyone bearing liability for the replacement part.” *Id.* at 25.

The FAA issues a “type certificate” for an engine design when it conforms to minimum safety criteria set out in federal regulations. *South Side Trust & Savings Bank of Peoria v. Mitsubishi Heavy Industries Ltd.*, 927 N.E.2d 179, 199-200 (Ill. App. Ct. 2010). In *Pridgen v. Parker Hannifin Corp.*, the Supreme Court of Pennsylvania held that the status as an FAA Type Certificate holder alone does not trigger Section (a)(2) of GARA. *Pridgen*, 905 A.2d at 436. Parallel to the facts here, Appellants in *Pridgen* held the FAA type certificate for the engine model that was installed on the accident aircraft, supplied specifications pursuant to which replacement components were installed, and assigned parts of the engine with a Textron number. *Id.* at 425-26. The court reasoned that Congress recognized the essential role of preventative maintenance in the aviation industry when it enacted GARA, and it would wholly undermine Congress’s intent to hold that GARA’s Rolling Provision is triggered by the status as a type certificate holder, original aircraft manufacturer, and/or original designer alone. *See id.* at 436; *see also Pridgen v. Parker Hannifin, Corp.* 916 A.2d 619, 623 (Pa. 2007).

Even further, this Court rejects Plaintiffs’ argument that Avco is a “manufacturer” simply because it assigned the flow divider a Lycoming part number. Pls.’ Opp’n 6-7, 25-27. Avco maintains that, while it assigns a part number to the flow divider, it is not holding out a particular design; it is simply identifying the “fit, form, and function” of the fuel delivery system for quality control purposes. (Def.’s Reply Ex. 3 (Rupert Dep.), at 77:8-20, 184:2-19, Sept. 21, 2023.)

In *Campbell v. Parker-Hannifin Corp.*, 69 Cal. App. 4th 1534 (Cal. Ct. App. 1999) the California Court of Appeals held that Section (a)(2) applied only to the entity that manufactured the replacement part. *Campbell*, 69 Cal. App. 4th at 1546. In that case, Appellants claimed that

Cessna was the manufacturer of a part because the name “Cessna” was stamped on the data plate attached to the part. *Id.* The same data plate also stated “Manufactured by Aeritalia Settore Strumentazione.” *Id.* The court reasoned that the mere appearance of the name Cessna on a part did not raise an inference that it was the manufacturer of the part. *Id.* The House Judiciary Committee Report also emphasized that the “rolling” aspect of the statute of repose was intended to provide victims and their families with recourse “*against new component part manufacturers* for a part installed subsequent to delivery in the event of a crash attributable to a structural defect or similar flaw in a new component part.” *Id.*

b

The Flow Divider Was Not Installed Within Eighteen Years of Accident

Plaintiffs argue that the defective plunger in the flow divider was installed within eighteen years before the accident. Pls.’ Opp’n at 2. By way of background, an aircraft mechanic with Aero Jackson testified that sometimes what is called a plunger may also sometimes be referred to as a “valve stem” or “plunger valve.” (Def.’s Mot. Ex. 23 (Burgess Dep.), at 86:13-21, Apr. 5, 2022.) The Precision Airmotive, LLC⁷ Overhaul Manual and Illustrated Parts List identifies the part at issue as the “valve” and specifically states that the “valve” and the body of a flow divider are a matched assembly. (Def.’s Mot. Ex. 22 (Overhaul Manual and Illustrated Parts List), at 103.) Therefore, “damage to either part necessitates replacement of the complete flow divider.” *Id.*

There is no substantiated evidence indicating that the plunger valve in the flow divider was replaced or installed eighteen years before the accident. The parties agree that the Aircraft’s Engine Logbook (the Engine Logbook) accurately documented, among other things, the life span

⁷ Precision Airmotive, LLC is a successor to Bendix. *Estate of Grochowske v. Romey*, 813 N.W.2d 687, 692 (Wis. Ct. App. Mar. 14, 2012); *see also* Def.’s Mot. Ex. 17 (Smith Dep.) at 132:17-19, Nov. 3, 2021 (testifying that Bendix and Precision Airmotive are now the same company).

of the Engine's flow divider. (Engine Logbook #1.) Given that the plunger valve and body of a flow divider cannot be purchased or replaced separately, this Court follows the chronological journey of the flow divider for clarity. The Engine Logbook showed that when the flow divider was overhauled in 1983 and 2004, both maintenance providers indicated on its service tags that the flow divider's manufacturer was Bendix with an embossed serial number 961N. *Id.* at P000777; *see also* Def.'s Mot. Ex. 16 (Mike's Fuel Metering Work Order), at P006567. At the time of the accident, a flow divider with the same manufacturer and embossed serial number was recovered from the wreckage. (Def.'s Mot. Ex. 15 (Photograph of Flow Divider).) These facts alone demonstrate the continuous presence of the same flow divider on the Aircraft for a minimum of twenty-nine years preceding the accident.

Moreover, Plaintiffs' accident reconstructionist, Steven Maier (Maier), also agreed that the flow divider that was installed on the Engine was also manufactured, sold, and first installed in 1972. *See* Def.'s Reply Ex. 1 (Maier Dep.), at 357:17-21, Oct. 26, 2023. Therefore, these facts are not subject to genuine dispute and cannot reasonably support Plaintiffs' argument that the flow divider was installed within eighteen years of the accident.

c

The Overhaul of the Flow Divider

Plaintiffs assert that Mike's Fuel Metering used new parts as part of the 2004 overhaul to test the flow of the flow divider, confirm its functionality, and certify it; thus, Plaintiffs argue that this action demonstrated the installation of "new parts" placed on the Aircraft within eighteen years of the accident.⁸ Pls.' Opp'n at 14. However, this Court disagrees. Not only do Plaintiffs fail to

⁸ Plaintiffs also dedicate three pages of their memorandum arguing that the Aircraft's cylinders were new parts manufactured by Avco. Pls.' Opp'n at 12-15. In sum, Plaintiffs argue that Mena Aircraft Engines used "all six cylinder kits, all six fuel injection lines, all pistons with piston pins

identify that the “new parts” were manufactured by Avco, but they also overlook the plain language and legislative intent of the Rolling Provision.

“According to the plain language of the statute, a new eighteen-year period begins on the date of completion of the *replacement* part or when a *new* part is added to that aircraft if that part is alleged to have caused death, injury, or damages.” *Hinkle*, 2004 WL 2413768, at *9 (emphasis added). Contrary to Plaintiffs’ argument, it is well settled that the overhaul of an aircraft part or component does not render it “new” for purposes of GARA. See *Robinson v. Hartzell Propeller Inc.*, 326 F. Supp. 2d 631, 663 (E.D. Pa. 2004). As the court in *Robinson* explained:

“A holding that would toll the statute of repose on a product on account of an overhaul of a critical component of that product would effectively eviscerate the statute of repose as it applied to many types of products. For example, aircraft are required by statute to be routinely overhauled, and certain critical parts must be repaired or replaced on a regular basis. 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.” *Id.* (internal quotations omitted).

The overhauled flow divider did not replace another flow divider nor was it added to the Aircraft. See *Hinkle*, 2004 WL 2413768, at *9. The flow divider was removed simply for maintenance purposes and returned to the Aircraft. *Id.* Therefore, these facts are not subject to genuine dispute and cannot reasonably support Plaintiffs’ argument that the overhaul rendered the installation of “new parts” placed on the Aircraft within eighteen years of the accident.

as well as other new [Lycoming] parts[.]” *Id.* at 12; see Pls.’ Opp’n Ex. A-6. However, as explained above, Avco’s counsel already conceded that Plaintiffs’ claims concerning the exhaust valves of cylinders four and six are not barred by GARA and thus are not subject to dispute in this motion.

The Replacement of the Flow Divider's Diaphragm

Courts have recognized that “a replacement of less than the whole part or all components of a system will [not] trigger a new period of repose under GARA.” *Crouch v. Honeywell International, Inc.*, 720 F.3d 333, 343 (6th Cir. 2013); *Hiser v. Bell Helicopter Textron Inc.*, 111 Cal. App. 4th 640, 650 (Cal. Ct. App. 2003). Plaintiffs implied during oral arguments, though not explicitly presented in their memorandum, that the plunger valve of the flow divider was loose as a result of a defect in the diaphragm. Therefore, it is Plaintiffs’ position that the replacement of the flow divider’s diaphragm during the 2004 overhaul restarts a new limitation period under GARA.

Plaintiffs’ arguments fail for two reasons. First, the reports of Plaintiffs’ accident reconstructionist, Maier, and accident investigation expert, Allan Fiedler, both explained that a screw that was designed to adhere the flow divider’s diaphragm to its plunger valve was found loose. Pls.’ Opp’n at 9-10. Thus, testimony revealed that it was not the diaphragm that was defective, but rather a screw which was the original screw. *Id.* Even so, assuming *arguendo* that the diaphragm was defective, the item causing the damage must be a *replacement* item; “there is no room to argue that replacement of a few parts of a larger system, [the flow divider], starts the rolling limitation period anew for all parts in the larger system.” *Hiser*, 111 Cal. App. 4th at 650. “Had Congress wished to draft GARA to cover the circumstances urged by [P]lantiff[s], it could easily have written the rolling statute of repose to commence anew whenever a component, system, subassembly, or other part is replaced or *modified*, provided that the replaced or modified component, system, subassembly, or other part caused the alleged damage.” *Id.* Second, the

replacement of the diaphragm, if it were defective, is immaterial because Plaintiffs have also not offered any evidence that Avco manufactured that part.

e

Lack of an Overboard Line

Plaintiffs' final theory of liability rests on the lack of an overboard line. Pls.' Opp'n at 2. Specifically, 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, as there was no overboard line to divert the fuel over the hot engine as exists in other model engines." *Id.* at 8. However, there never was an overboard line so it could not be replaced, it could have only been added and none was. If anything, the absence of an overboard line was a design defect. The absence of a design feature cannot be considered a newly installed part under GARA's Rolling Provision. Holding otherwise would undermine the legislative intent of Congress; GARA "recogni[zes] 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." *Moore*, 2011 WL 6400670, at *2 (internal quotation omitted). In short, a part or product cannot demonstrate its safety and quality if it was never part of the Engine to begin with. *See id.*

ii

Fraud Exception

Congress established the Fraud Exception which provides that GARA will not apply "if the claimant pleads with specificity the facts necessary to prove ... that the manufacturer ... knowingly misrepresented ... or concealed or withheld from the [FAA], required information that is material and relevant to the performance or the maintenance or operation of such aircraft, or the

component[.]” 49 U.S.C. § 40101 (b)(1). In other words, Plaintiffs must prove: “(1) knowing misrepresentation, or concealment, or withholding; (2) of required information that is material and relevant; (3) that is causally related to the harm they suffered.” *Robinson*, 326 F. Supp. 2d at 647 (citing *Rickert v. Mitsubishi Heavy Industries, Ltd.*, 923 F. Supp. 1453, 1456 (D. Wyo. 1996)). “It is not sufficient for a plaintiff to allege that the aircraft was negligently designed.” *Id.* Rather, a “plaintiff must offer evidence that [a] defendant knowingly misrepresented or concealed or withheld this design defect in communications with the FAA.” *Id.*

Plaintiffs argue that genuine issues of material fact exist concerning whether Avco failed to “monitor trends of failure and to disclose them affirmatively to the FAA[.]” Pls.’ Opp’n at 28. Specifically, Plaintiffs maintain that GARA’s Fraud Exception applies because Avco “has spent decades” knowingly misrepresenting that the IO-540 series engines were prone to in-flight fire, stuck valves, and fuel vapor and has concealed these dangerous conditions. *Id.* at 2.

Plaintiffs first raised the Fraud Exception in response to the parties’ cross-motions to strike and compel discovery responses in 2021. *Williams*, 2021 WL 2946198, at *3. After examining the law and Plaintiffs’ Amended Complaint, this Court held that “Plaintiffs fail[ed] to plead with particularity facts sufficient to show that Defendants knowingly misrepresented or willingly withheld information from the FAA” and thus the Fraud Exception does not apply. *Id.* at *6.

“The law of the case doctrine ‘is a rule of practice, based on sound policy that, when an issue is once * * * decided, that should be the end of the matter.’” *DiMaggio v. Tucker*, 288 A.3d 981, 986 (R.I. 2023) (quoting *Barrett v. Baylor*, 457 F.2d 119, 123 (7th Cir. 1972)). The Rhode Island Supreme Court has noted that “[t]he purpose of the law of the case doctrine is to ensure ‘the stability of decisions and avoid unseemly contests between judges that could result in a loss of public confidence in the judiciary.’” *Id.* (quoting *Chavers v. Fleet Bank (RI), N.A.*, 844 A.2d 666,

678 (R.I. 2004) (brackets omitted)). The law of the case doctrine, however, is a flexible rule that may not apply when a subsequent ruling can be based on an expanded record. *See Goodman v. Turner*, 512 A.2d 861, 864 (R.I. 1986).

Now, Plaintiffs assert that the Fraud Exception applies because Avco admitted the dangerous condition of fuel leakage on an engine in flight on its Service Bulletin in 2013. Pls.’ Opp’n at 28; *see* Pls.’ Opp’n Ex. A-8. However, despite Plaintiffs’ assertions, the record has not expanded between the July 8, 2021 Decision and this motion. The Service Bulletin document was available when this Court initially determined the Fraud Exception does not apply in 2021. *See Williams*, 2021 WL 2946198. Even so, this Service Bulletin document does not change Plaintiffs’ pleadings nor demonstrate specific facts that show Avco knowingly misrepresented, concealed, or withheld any information from the FAA. *See Robinson*, 326 F. Supp. 2d at 647. The same question that was decided in 2021 is before the same trial justice in a different procedural context; therefore, the law of the case doctrine governs, and the Fraud Exception set forth in GARA does not apply. *See Goodman*, 512 A.2d at 864.

B

Rhode Island Law

Plaintiffs argue that Avco should be responsible for the defect in the flow divider because a manufacturer who incorporates defective components “in its procurement and design” is liable under Rhode Island law. Pls.’ Opp’n at 27. However, GARA expressly preempts state law. *Burroughs*, 78 Cal. App. 4th at 691. Section (d) of GARA provides that “[t]his section supersedes any State law to the extent that such law permits a civil action described in subsection (a) to be brought after the applicable limitation period for such civil action established by subsection (a).” 49 U.S.C. § 40101(d).

It is well settled that Section (d) of GARA establishes limited federal preemption of any state law civil action, regardless of theory, if it would expose general aviation manufacturers to liability for longer than the eighteen-year limitation period. *See, e.g., Intact Insurance Co. v. Piper Aircraft Corporate Irrevocable Trust*, No. 15-24792-CV, 2017 WL 3328225 (S.D. Fla. June 29, 2017), report and recommendation adopted, No. 15-24792-CIV, 2017 WL 3328170 (S.D. Fla. Aug. 3, 2017); *see also* H.R.Rep. No. 103-525(II) at 7 (1994) (In enacting GARA, Congress “voted to permit, in this exceptional instance, a very limited Federal preemption of State law.”).

IV

Conclusion

For the reasons stated herein, this Court **GRANTS** Avco’s Motion for Partial Summary Judgment under GARA. 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: **November 28, 2023**

JUSTICE/MAGISTRATE: **Licht, J.**

ATTORNEYS:

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