

>>> GA Revitalization: The Act that resuscitated a dying industry

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# Resuscitating a dying industry:

## The General Aviation Revitalization Act of 1994

December 17, 1903. Most aviators will recognize this as the historic date on which the Wright Brothers made the first flight of a controlled, powered, heavier-than-air aircraft.

Far fewer aviators are likely to recognize the significance of August 17, 1994. It was the effective date of the General Aviation Revitalization Act of 1994 (“GARA”).

With this single stroke of legislative penmanship, Congress put an end to the long tail of product liability that had haunted manufacturers of general aviation aircraft in the United States. In so doing, Congress hoped to resuscitate not just airplane manufacturing, but also engineering, sales, marketing, repair, maintenance, and related industries supporting general aviation.

Nearly seventeen years later, the results of GARA are quite evident. While general aviation has not returned to the heady days of the late 1970s, things are far better than they were in the lean years immediately preceding GARA’s adoption.

### A Dying Industry

Between 1980 and 1987, production of general aviation



By Darrell A. Clay

aircraft in the United States fell from 11,877 to 1,085 – a decline of more than 90%. Making these figures all the more dramatic is that in 1978, general aviation aircraft production reached its post-World War II zenith of 17,811. This means that in a ten year period, total output plummeted by a staggering 94%!

The erosion of this once-proud industry had devastating effects. Some 20,000 manufacturing jobs disappeared, along with about 80,000 related jobs in sales, service, and related industries. In one year (1990-1991), the total number of FBO’s declined from 10,000 to 4,900, with each closure representing the loss of multiple jobs. In 1980, the United States exported more than \$120 million worth of single engine piston aircraft; by 1992, exports

had declined to \$30 million.

Although a number of factors contributed to this precipitous decline, including inflation, a recession, and soaring oil (and therefore gasoline) prices, general aviation manufacturers for the most part attributed the decline to soaring insurance costs brought on by product liability lawsuits. Indeed, when Cessna halted production of piston-engine aircraft in 1986, many suspected the primary cause was the product liability crisis. A few years later, testifying before Congress in 1993, Cessna’s then-Chairman confirmed that product liability concerns were “the sole reason we got out of the [piston aircraft] business.”

At that time, manufacturers could be sued at any time for an alleged defect in the design of an airplane, regardless of how long the design had been in production or use. For manufacturers such as Cessna and Piper, the thousands of aircraft that they had produced over the years represented not just a track record of success, but also the prospect of unbridled liability, for each airplane could be the subject of a lawsuit alleging a design defect.

The high costs of such

litigation, even if the design defect claim ultimately proved to lack merit, were staggering. Total amounts paid by manufacturers for liability awards and settlements jumped from a total of \$24 million in 1977 to over \$200 million in 1987.

Beech examined the 203 accident claims it defended between 1983 and 1986. In none of those cases did the National Transportation Safety Board cite a design or manufacturing defect as the probable cause of the accident. In contrast, 118 of the accidents were, according to the NTSB, caused by pilot or operator error. Despite this, Beech reportedly spent an average of \$530,000 defending each claim.

In 1987, Beech, Cessna, and Piper estimated that their annual costs for product liability ranged from \$70,000 to \$100,000 for each aircraft built.

### **A Solution: Statute of Repose?**

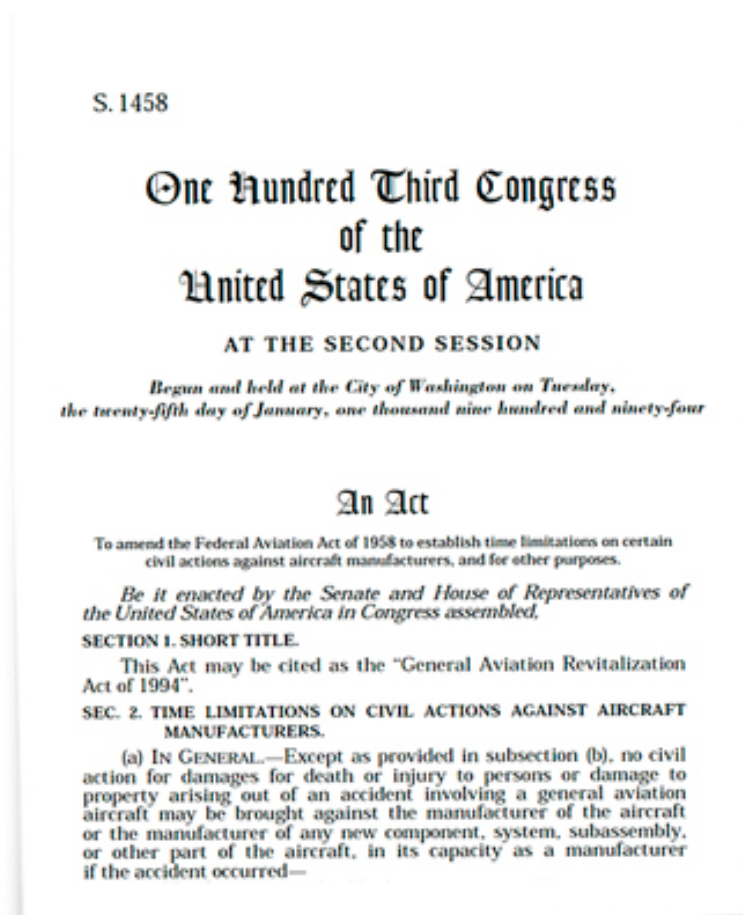
Reacting to these developments, several members of Congress whose districts were most impacted sought a legislative solution. Prominent in this effort were members of Kansas' congressional delegation, including Representative Dan Glickman, a Democrat who represented Kansas' Fourth Congressional District (which encompassed Wichita, long the epicenter of general aviation in the United States), and Senator Nancy Kassenbaum.

One of the first such proposals, the "General Aviation Accident Liability Standards Act of 1989," proposed comprehensive changes in a variety of areas affecting general aviation liability. Most significantly, it would have implemented a single, uniform standard of product liability to the exclusion of any state law on the issue. In the next session of Congress, a similarly-named and equally comprehensive "General Aviation Accident Liability Standards Act of 1991" was introduced.

Both pieces of legislation included a proposed uniform national "statute of repose" for claims against general aviation manufacturers, varying from as short as 12 years to as long as 20 years. For those unfamiliar with the concept, a statute of repose is similar to a statute of limitation, in that both represent a deadline by which action must occur. The key difference is that if the repose period expires, the right to bring the action is extin-

guished, regardless of whether any injury has occurred.

General aviation manufacturers strongly supported the concept of a national statute of repose, because in their view, it represented a fixed point beyond which concerns about liability for a design defect could be eliminated. However, because these early proposals also contained numerous



others changes, they were unable to make it out of committee.

The tipping point, however, may have been February 16, 1993, when the United States Court of Appeals for the Tenth Circuit – which covers Colorado, Kansas, New Mexico, Oklahoma, Wyoming, and Utah – handed down its decision in *Cleveland v. Piper Aircraft Corp.*, 985 F.2d 1438 (10th Cir. 1993). It's often said that “bad facts make bad law,” and the Cleveland decision (described in detail in the sidebar) certainly illustrates that maxim. It essentially concluded that states were free to impose design liability standards on aircraft so long as they were not contradictory to an existing Federal Aviation Regulation. Manufacturers rightly feared the prospect of having to comply with fifty different sets of design rules for their aircraft.

### **GARA Gains Traction**

In October 1993, the House Committee on Public Works and Transportation's Subcommittee on Aviation held hearings on GARA. An all-star lineup of witnesses testified in support of the bill, including AOPA's President, Phil Boyer; Cessna's Chairman and CEO, Russell Meyer, Jr.; Piper's President, Charles Suma; Theodore Collins, Vice President and General Counsel of Boeing; Edward Stimpson, President of the General Aviation Manufacturers Association; and many others. The only witness who testified in opposition to the proposed legislation was David I. Katzman, a pilot and attorney.

As presented for the hearing, GARA was substantially pared down from earlier proposals. It focused on a single concept – a federal statute of repose, set at 15 years from the date the aircraft was delivered to its first purchaser. The 15-year period would begin anew with respect to any component, system, subassembly or other part added to the aircraft after its first delivery, where that item allegedly caused the underlying accident.

Why 15 years instead of the 12 or 20 years contained in prior proposals? GARA's primary proponent, Rep. Glickman, addressed that in his testimony to the Subcommittee on Aviation:

*“I think we felt that a 15-year period was a generally suitable period. We have had it 12 years before. Some have proposed 20 years. There have been different numbers suggested, and we felt that 15 years was a suitable period of time over and above the amount of time it takes for a design defect to manifest itself.”*

In other words, the 15-year period seemed like a reasonable compromise.

Whether it was the 15-year period, the Cleveland decision, or something else, GARA quickly found momentum in the halls of Congress. Some 241 representatives initially signed on as co-sponsors of the bill; by the time it reached the floor of the House, there were a total of 305 co-sponsors. In the Senate, 51 members co-sponsored the legislation.

While the legislation followed a bit of a tortured path between the two chambers – including at one point having three different repose periods depending on the type of aircraft (piston, turbo-prop, or “other general aviation aircraft (including jet-powered general aviation aircraft)” – it ultimately passed both houses by voice vote. President Clinton signed GARA on August 17, 1994 and it became effective that same day.

In its final form, GARA provided for an 18-year repose period. It also included exceptions to the repose period where the manufacturer knowingly misrepresented, concealed, or withheld information from FAA related to the harm allegedly suffered; for passengers of medical or air ambulance flights; for persons who were not aboard the aircraft at the time of the accident; and for warranty-based claims. It applies only to aircraft with a maximum seating capacity of less than 20

passengers that are not engaged in scheduled passenger-carrying operations. It expressly stated that it superseded any state law to the contrary, ensuring a uniform, nationwide repose period.

### **Achieving Success?**

By almost any measure, GARA succeeded in revitalizing general aviation. True to its word, following GARA's adoption, Cessna returned to the single engine piston market. Production of piston engine singles began on July 10, 1996, and the first customer delivery, a 172R, took place in January 1997. In 2004, Cessna celebrated delivery of the 5,000th single engine piston aircraft since restarting production.

In a press release issued the end of 2004, Cessna said of its single engine production facility in Independence, Kansas: "Since opening in 1996," the release read, "Cessna has assisted in stimulating the local economy through employees' salaries and benefits, and by bringing customers to the area. Cumulatively, Cessna has paid employees over \$171 million in salaries and \$1.2 million in tuition aid since 1996. Cessna has delivered over 5,400 aircraft from this facility to customers from 53 different countries. In the future, Cessna anticipates it will deliver 600-1,000 aircraft from this facility every year."

A 2001 Government Accounting Office report noted that renewed general aviation aircraft manufacturing had restored 25,000 jobs. That is precisely the figure that Cessna's president, Mr. Meyer, told the Subcommittee on Aviation would be created if GARA were enacted.

GARA also achieved its objective of curtailing product liability suits against general aviation manufacturers. In 1997, Cessna's General counsel reported that the number of new lawsuits against Cessna was less than fifty percent of what it was in 1992.

GARA was not without side effects, however. Other potential "deep pockets," like parts

manufacturers, maintenance organizations, flight schools, and aircraft owners, saw their insurance premiums increase as they became the new targets of lawsuits. Costs for acquiring new single-engine aircraft grew significantly as the insurance premiums born by each component manufacturer were passed up the supply chain.

### **Open Questions**

Today, there are some open questions about GARA. Most prominently, in 2004, FAA adopted the Sport Pilot rule, which permitted the manufacture of aircraft not certified under the Federal Aviation Regulations. As a result, those aircraft are not issued "type certificates" as with an aircraft certified under Part 23. Because GARA's definition of "general aviation aircraft" specifically references "type certificate," light sport aircraft are probably not protected. In addition, litigants continue to look for creative ways to plead around GARA, sometimes with success, other times without.

Nevertheless, GARA is routinely noted as the singular reason why there continues to be a relatively-healthy environment for the manufacture of single-engine piston aircraft in the United States. It is hard to imagine how the domestic market for general aviation production would have survived without GARA.

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