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Aviation Repair Stations and Strict Liability

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AVIATION REPAIR STATIONS AND STRICT LIABILITY

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By now it is well settled that a seller is legally responsible to those injured as the result of a defect in its product.[1] This applies even though the seller did not make the defective product or component,[2] and also extends liability to the manufacturer.[3] A lessor has the same liability.[4]

A defect may be an isolated specific oversight occurring at the time of manufacture,[5] or one which later develops by the very nature of the product's use.[6] The defect may also be one of design[7] or as a result of failing to warn.[8] The adequacy of the warning is judged from the standpoint of the average user.[9] It is also recogniz-

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[1] Shamrock Fuel & Oil Sales Co. v. Tunks, 416 S.W.2d 779 (Tex. 1967); McKisson v. Sales Affiliates, Inc., 416 S.W.2d 787 (Tex. 1967); RESTATEMENT (SECOND) OF TORTS §§ 402(A)-(B) (1965).

[2] Ford Motor Co. v. Mathis, 322 F.2d 267 (5th Cir. 1963).

[3] *Id.*

[4] Bachner v. Pearson, 479 P.2d 319 (Alas. 1970); United Airlines, Inc. v. W.E. Johnson Equip. Co., 227 So. 2d 528 (Fla. Dist. Ct. App. 1969); Cintrone v. Hertz Truck Leasing & Rental Serv., 45 N.J. 434, 212 A.2d 769 (1965); Stang v. Hertz Corp., 83 N.M. 730, 497 P.2d 732 (1972).

[5] Putman v. Erie City Mfg. Co., 338 F.2d 911 (5th Cir. 1964).

[6] Nevels v. Ford Motor Co., 439 F.2d 251 (5th Cir. 1971); Sharp v. Chrysler Corp., 432 S.W.2d 131 (Tex. Civ. App. 1968), *writ ref'd n.r.e.*

[7] Braniff Airways, Inc. v. Curtiss-Wright Corp., 411 F.2d 451 (2d Cir. 1969), *cert. denied*, 396 U.S. 959 (1969), *cert. denied*, 400 U.S. 829 (1970); Olsen v. Royal Metals Corp., 392 F.2d 116 (5th Cir. 1968); Swain v. Boeing Airplane Co., 337 F.2d 940 (2d Cir. 1964); Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963); Garcia v. Sky Climber, Inc., 470 S.W.2d 261 (Tex. Civ. App. 1971), *no writ hist.*; Pizza Inn, Inc. v. Tiffany, 454 S.W.2d 420 (Tex. Civ. App. 1970), *no writ hist.*

[8] Alman Bros. Farms & Feed Mill, Inc. v. Diamond Lab. Inc., 437 F.2d 1295 (5th Cir. 1971); Doss v. Apache Powder Co., 430 F.2d 1317 (5th Cir. 1970); Technical Chem. Co. v. Jacobs, 480 S.W.2d 602 (Tex. 1972); Garcia v. Sky Climber, Inc., 470 S.W.2d 261 (Tex. Civ. App. 1971), *no writ hist.*

[9] Berkebile v. Brantly Helicopter Corp., 219 Pa. Super. 479, 281 A.2d 707 (1971).

ed that the duty of the manufacturer is continuing,[10] so as to require additional warnings of those products already in use in which defects develop. It is also well recognized that where a product fails, it is not necessary that the specific defect causing the failure be established,[11] in that the defect may be established by circumstantial evidence.[12]

Much has also been written concerning the legal duty of an automobile manufacturer in "crash-worthiness" or "second collision" cases.[13] While the growing majority[14] favors the rule that the manufacturer is under a legal duty in the design of the product to foresee or anticipate that the product may be involved in a collision and therefore take precautions for the protection of the occupants, there is authority to the contrary.[15]

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[10] Braniff Airways v. Curtiss-Wright Corp., 411 F.2d 451 (2d Cir. 1969), *cert. denied*, 396 U.S. 959 (1969), *cert. denied*, 400 U.S. 829 (1970); Noel v. United Aircraft Corp., 342 F.2d 232 (3d Cir. 1964).

[11] Alman Bros. Farms & Feed Mills, Inc. v. Diamond Lab, Inc., 437 F.2d 1295 (5th Cir. 1971); Chestnut v. Ford Motor Co., 445 F.2d 967 (4th Cir. 1971); Kridler v. Ford Motor Co., 422 F.2d 1182 (3d Cir. 1970).

[12] Franks v. National Dairy Prods. Corp., 414 F.2d 682 (5th Cir. 1969); American Motors Corp. v. Mosier, 414 F.2d 34 (5th Cir. 1969); Pittsburg Coca-Cola Bottling Works v. Ponder, 443 S.W.2d 546 (Tex. 1969); Darryl v. Ford Motor Co., 440 S.W.2d 630 (Tex. 1969).

[13] *See, e.g.*, Hoenig & Werber, *Automobile Crashworthiness: An Untenable Doctrine*, 1971 INS. L.J. 583; Nader & Page, *Automobile Design & the Judicial Process*, 55 CALIF. L. REV. 645 (1967); Note, 52 IOWA L. REV. 953 (1967); Note, 24 VAND. L. REV. 862, 864 (1971).

[14] Driesenstok v. Volkswagenwerk, A.G., 489 F.2d 1066 (4th Cir. 1974); Passwaters v. General Motors Corp., 454 F.2d 1270 (8th Cir. 1972); Larsen v. General Motors Corp., 391 F.2d 495 (8th Cir. 1968) (applying Michigan law by stipulation of parties); Bremier v. Volkswagen of America, Inc., 340 F. Supp. 949 (D.D.C. 1972); Grundmanis v. British Motor Corp., 308 F. Supp. 303 (E.D. Wis. 1970); Dyson v. General Motors Corp., 298 F. Supp. 1064 (E.D. Pa. 1969); Cronin v. J.B.E. Olson Corp., 8 Cal. 3d 121, 501 P.2d 1153, 104 Cal. Rptr. 433 (1972); Badorek v. General Motors Corp., 11 Cal. App. 3d 902, 90 Cal. Rptr. 305 (1970); Friend v. General Motors Corp., 118 Ga. App. 763, 165 S.E.2d 734 (1968), *cert. dismissed*, 225 Ga. 290, 167 S.E.2d 926 (1969); Miehr v. Brown, 3 Ill. App. 3d 802, 278 N.E.2d 869 (1972), *rev'd*, 54 Ill. 2d 539, 301 N.E.2d 307 (1973); Brandenburger v. Toyota Motor Sales, U.S.A., Inc., 513 P.2d 268 (Mont. 1973); Bolm v. Triumph Corp., 33 N.Y.2d 151, 305 N.E.2d 769, 350 N.Y.S.2d 644 (1973); Storey v. Exhaust Specialties & Parts, Inc., 255 Ore. 151, 464 P.2d 831 (1970); Mickle v. Blackmon, 252 S.C. 202, 155 S.E.2d 173 (1969); Engberg v. Ford Motor Co., — S.D. —, 205 N.W.2d 104 (1973); Ellithrop v. Ford Motor Co., 503 S.W.2d 516 (Tenn. 1973); 2 CCH 1974 PROD. LIAB. REP. ¶ 7092.

[15] Evans v. General Motors Corp., 359 F.2d 822 (7th Cir. 1966); Alexander v. Seaboard Air Lines R.R. Co., 346 F. Supp. 320 (W.D. N.C. 1971); McClung v. Ford Motor Co., 333 F. Supp. 17 (S.D.W.Va. 1971), *aff'd*, 472 F.2d 240

Without rehashing the philosophy of these two lines of cases, it is submitted that they are of academic interest only when considering the law of product liability in the aviation field. While automobile manufacturers may not have given consideration to the survivability of the occupants of its vehicles, this is not true of the aviation industry.[16]

This recognition makes applicable the universal rule that even though the law may not place a duty upon a defendant in the first instance, if that defendant voluntarily assumes such duty, then it is legally responsible for the breach thereof. Most will recall from law school the case of the railroad that was held responsible for the negligence of the flagman it voluntarily placed at a crossing.[17]

Since aircraft manufacturers have taken steps toward protecting occupants from the consequences of a crash, they have in fact voluntarily assumed this duty. Having voluntarily assumed the duty to anticipate the effect of a crash upon an occupant, the aircraft manufacturer, like the railroad in *Wright*, is in no position to contend that it was under no such legal duty in its design considerations and therefore is not responsible for its breach.

Nor could the aircraft manufacturer successfully argue that it could limit the scope of this duty to the specific area which it considered, such as seat belts or shoulder harnesses, and thus escape liability in other areas, like post impact fuel fire or use of impact absorbing structures and materials, any more than the railroad in a situation like *Wright* could have escaped liability to a motorist had it provided a flagman to warn pedestrians only.

In similar fashion, the courts have refused to allow the Federal Aviation Administration to limit the scope of its liability to those duties specifically defined in its various operational manuals once its general duties have been established or recognized.[18]

(4th Cir. 1973), *cert. denied*, 412 U.S. 940 (1973); Schumard v. General Motors Corp., 270 F. Supp. 311 (S.D. Ohio 1967); Willis v. Chrysler Corp., 264 F. Supp. 1010 (S.D. Tex. 1967); Burkhard v. Short, 28 Ohio App. 2d 141, 275 N.E.2d 632 (1971).

[16] "One of the responsibilities of designers and manufacturer of aircraft is to design, to the best of their ability, crashworthiness into aircraft. We are all aware of this responsibility. . . ." Boedel, *Methods of Crashworthiness Testing for Aircraft Design*, SOCIETY OF AUTOMOBILE ENGINEERS 720323 (Mar. 1972).

[17] Chicago & A. Ry. Co. v. Wright, 120 Ill. App. 218 (1905).

[18] Hartz v. United States, 387 F.2d 870 (5th Cir. 1968); Furumizo v. United States, 381 F.2d 965 (9th Cir. 1967); Ingham v. Eastern Air Lines, 373 F.2d 227 (2d Cir. 1967).

One area of products liability in which there are few decided cases and in which little has been written is the liability growing out of inspection, maintenance, repair or overhaul of aircraft and components. While the term "products liability" includes both negligence and strict liability in tort, an attempt will be made to separate these two concepts, though this has not always been the result in the reported decisions and in some instances it is difficult, if not impossible, to avoid overlapping in some of the gray areas.

A. *Vicarious Liability of Repair Stations*

Another area of growing interest is the liability of a general repair shop for the negligent or defective workmanship performed by an independent specialty shop to which the repair shop sublet a portion of the work it contracted to do with the aircraft owner. This would include both repair and overhaul of various components and may or may not be involved with a required periodic inspection. Also included in our consideration should be the effect of the certification of airworthiness required by Part 43 of the Federal Air Regulations in connection with an annual or other periodic inspection.[19]

RESTATEMENT (SECOND) OF TORTS, § 429 (1965) states an exception to the general rule that an employer is immune from liability for the negligence of his independent contractor, in the following formulation:

> One who employs an independent contractor to perform services for another which are accepted in the reasonable belief that the services are being rendered by the employer or by his servants, is subject to liability for physical harm caused by the negligence of the contractor in supplying such services, to the same extent as though the employer were supplying them himself or by his servants.[20]

The underlying policy of this rule is clear: when an individual contracts for work to be done by a certain organization, he presumably does so on the basis of his knowledge of the organization's competence. Additionally, he may have considered the organiza-

[19] For a detailed review of the Federal Aviation Administration's liability in this area, *see* Riddell, *Federal Tort Claims Act—Governmental Liability For Negligent Chart Publication and Aircraft Certification*, 19 WAYNE L. REV. 1201 (1973).

[20] RESTATEMENT (SECOND) OF TORTS § 429 (1965).

tion's solvency and ability to make right any wrongs which it may commit. If that organization then sublets part of the work contracted for, the customer has been deprived of some of these considerations. He may or may not have knowledge about the confidence in the subcontractor's competence or solvency. If the subcontractor's work causes harm or loss, the obligation to compensate should not only be upon the subcontractor but also upon the organization which selected him.

The theory outlined above was followed by the court in *Russell's Express v. Bray's Garage*,[21] where the defendant agreed to do general repair work on plaintiff's automobile, but informed plaintiff that welding would be done by another party. Later plaintiff was injured as a result of the welder's negligence. The defendant sought to escape liability on the ground that it was not responsible for the welding, but the court refused that argument, holding:

> It appears that defendant conducted a general repair garage. It did not do welding, but had what it believed a competent welder, to whom welding jobs were turned over. When a garage takes a repair job, and the contrary does not appear, so far as the customer is concerned, it undertakes for itself the whole job. Whether the garage does all the work is quite immaterial. Should the job require work to be done outside the capacity of its shop, . . . the garage gets the work done on its own account, being equally responsible to the customer whether the work is done by its immediate employees or by specialists in the different lines of work required to be done.[22]

This rule was also followed in *Zevon v. Tennebaum*,[23] and *Irrianne v. Diamond T. of Hudson County, Inc.*[24]

Strict liability in tort for defects in repairs or overhaul can be supported by the doctrine of "implied warranty of workmanlike service."

B. *An Implied Warranty of Workmanlike Service*

The theory of an implied warranty of workmanlike service is illustrated in three Supreme Court decisions: *Ryan Stevedoring*

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[21] 94 Conn. 520, 109 A. 722 (1920).

[22] *Id.* at —, 109 A. at 723.

[23] 73 Ariz. 281, 240 P.2d 548 (1952).

[24] 94 N.J. Super. 148, 227 A.2d 335 (1967). *See also* 7-A D. BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW & PRACTICE 5029 (1950).

Company v. Pan-Atlantic Steamship Corp.,[25] *Crumady v. The J. H. Fisser*,[26] and *Italia Societa v. Oregon Stevedoring Co.*[27] While all three cases involved actions by a shipowner to recover indemnity from a stevedoring contractor, where the contractor's employee has recovered judgment against the shipowner on the basis of unseaworthiness, there is no reason why this same principle would not apply to other similar situations such as aircraft repair or overhaul.[28]

In *Ryan,* a stevedoring contractor agreed to perform all stevedoring operations required by the shipowner, without signing a formal stevedoring contract or an express indemnity agreement. Under the agreement, the contractor loaded a ship at Georgetown, S.C., and unloaded it at a pier in Brooklyn. During the unloading, a longshoreman employed by the contractor was injured by a roll of pulpboard which had been insufficiently secured when stored by the contractor in Georgetown. Under the Longshoreman's Act, the contractor's insurance carrier paid the longshoreman compensation and furnished him medical services. Claiming that because of the unsafe stowage of the cargo, the ship was unseaworthy and that the shipowner had failed to furnish him with a safe place to work, the longshoreman sued the shipowner and obtained a judgment for $75,000.00. The shipowner then brought suit against the contractor for reimbursement of that amount paid to the longshoreman as a result of the $75,000.00 judgment.

In framing the issue the Court spoke in terms of contract:

> The . . . question is whether, in the absence of an express agreement of indemnity, a stevedoring contractor is obligated to reimburse a shipowner for damages caused it by the contractor's improper stowage of cargo.[29]
>
> Because respondent [shipowner] . . . relies entirely upon petitioner's

[25] 350 U.S. 124 (1956).

[26] 358 U.S. 423 (1959).

[27] 376 U.S. 315 (1964). The remedy provided by these cases, while still sound law, has now become meaningless, since by recent amendment to the Longshoremen and Harbor Worker's Compensation Act, a longshoreman no longer has a cause of action against the vessel owner for unseaworthiness.

[28] Likewise, if "one who is an independent contractor negligently makes, rebuilds, or repairs a chattel for another is subject to the same liability as that imposed upon negligent manufacturers of chattels, "S.H. Kress & Co. v. Godman, 95 Idaho 614, 515 P.2d 561 (1973), he should also be imposed with the same liability as a non-negligent (strict liability in tort) manufacturer.

[29] 350 U.S. at 132 (emphasis deleted).

> contractural obligation, we do not meet the question of a noncontractual right of indemnity. . . .[30]

Similarly, in discussing the issue the Court indicated that negligence played no part in the shipowner's theory of recovery.

> The shipowner here holds the petitioner's uncontroverted agreement to perform all of the shipowner's stevedoring operations. . . . Competency and safety of stowage are inescapable elements of the service undertaken. This obligation is not a quasicontractual obligation implied in law or arising out of a noncontractual relationship. It is of the essence of petitioner's stevedoring contract. It is petitioner's warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product.[31]

Likewise, contributory negligence of the shipowner was not a defense since the recovery was for breach of the implied warranty. The contractor had asserted that because the shipowner had an obligation to supervise the stowage and reject unsafe cargo, it should be barred from recovery because of its failure to discover the improper stowage. The Court rejected this contention, stating that:

> . . . the contractor, as the warrantor of its own services, cannot use the shipowner's failure to discover and correct the contractor's own breach of warranty as a defense.[32]

In the *Crumady* case, the petitioner was injured while working for a stevedoring company engaged in unloading a ship under contract with a third party to whom the ship had been chartered. Petitioner brought this suit in admiralty against the ship, which impleaded the stevedoring company. The petitioner longshoreman had been injured by a winch which had been adjusted by fellow employees of the stevedoring company "in a way that made it unsafe and dangerous for the work at hand."[33] Since the negligence of petitioner's fellow employees was established, the court spoke in terms of negligence as being the breach of the implied warranty of workmanlike service:

> We think this case is governed by the principle announced in the

[30] *Id.* at 133.

[31] *Id.* at 133-34.

[32] *Id.* at 134-35.

[33] 358 U.S. at 427.

> *Ryan* case. The warranty which a stevedore owes when he goes aboard a vessel to perform services is plainly for the benefit of the vessel whether the vessel's owners are parties to the contract or not. That is enough to bring the vessel into the zone of modern law that recognizes rights in third-party beneficiaries. Restatement, Law of Contracts, § 133. Moreover, as we said in the *Ryan* case, "competency and safety of stowage are inescapable elements of the service undertaken." 350 U.S., at 133. They are part of the stevedore's "warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product." Id., at 133-134. See *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050.
>
> We conclude that since the negligence of the stevedores, which brought the unseaworthiness of the vessel into play, amounted to a breach of the warranty of workmanlike service, the vessel may recover over.[34]

Italia Societa per Azioni di Navigatione v. Oregon Stevedoring Co., Inc.,[35] leaves no doubt that this doctrine also applies in non-negligence situations. There, the stevedoring contractor unknowingly supplied defective equipment (a rope designed to withstand substantially more pressure than was exerted on it) to its employees. The injured longshoreman recovered a judgment against the ship for unseaworthiness and the ship in turn sued the stevedoring contractor for indemnity. Both the District Court and Ninth Circuit disallowed indemnity on the basis that "a stevedore's implied warranty of workmanlike service is not breached in the absence of a showing of *negligence* in supplying defective equipment. 310 F.2d 481 (9th Cir. 1962)."[36]

The Supreme Court rejected this reasoning, finding that negligence was not a necessary element of the basis for recovery:

> For the reasons stated below, we have determined that the absence of negligence on the part of a stevedore who furnishes defective equipment is not fatal to the shipowner's claim of indemnity based on the stevedore's implied warranty of workmanlike service.
>
> In *Ryan v. Pan-Atlantic Corp.*, 350 U.S. 124, the landmark decision in this area, it was established that a stevedoring contractor who enters into a service agreement with a shipowner is liable to indemnify the owner for damages sustained as a result of the steve-

[34] *Id.* at 428-29.

[35] 376 U.S. 315 (1964).

[36] *Id.* at 318 (emphasis added).

> dore's improper stowage of cargo. Although the agreement between the shipowner and stevedore was silent on the subject of warranties and standards of performance, the Court found that the essence of the stevedore's contract is to perform "properly and safely." Competency and safety . . . are inescapable elements of the service undertaken. This undertaking is the stevedore's "warranty of workmanlike service that is comparable to a manufacturer's warranty of the soundness of its manufactured product," 350 U.S., at 133-134, a warranty generally deemed to cover defects not attributable to a manufacturer's negligence. See also *Crumady v. The J. H. Fisser*, 358 U.S. 423, 428-429.[37]

The court also outlined the policy reasons for imposing this liability and drew a direct analogy between those providing "workmanlike services" and a seller or manufacturer of a product:

> And the description of the stevedore's obligation as one of performance with reasonable safety is not a reference to the reasonable-man test pertaining to negligence, but a delineation of the scope of the stevedore's implied contractual duties. The implied warranty to supply reasonably safe equipment may be satisfied with less than absolutely perfect equipment; however, the issue of breach of the undertaking does not turn on whether the contractor knew or should have known that his equipment was safe, but on whether the equipment was in fact safe and fit for its intended use. . . .
>
> True the defect here was latent and the stevedore free of negligent conduct in supplying the rope. But latent defects may be attributable to improper manufacture or fatigue due to long use and may be discoverable by subjecting the equipment to appropriate tests. Further the stevedore company, which brings its gear on board knows the history of its prior use and is in a position to establish retirement schedules and periodic retests so as to discover defects and thereby insure safety of operations. . . . It is considerations such as these that underlie a manufacturer's or seller's obligation to supply products free of defects and a shipowner's obligation to furnish a seaworthy vessel. They also serve to render a tort standard of negligence inapplicable to the stevedore's liability under its warranty of workmanlike service. For they illustrate that liability should fall upon the party best situated to adopt preventive measures and thereby to reduce the likelihood of injury. Where, as here, injury-producing and defective equipment is under the supervision and control of the stevedore, the shipowner is powerless to minimize the risk; the stevedore is not.[38]

[37] *Id.* at 318-19.

[38] *Id.* at 321-24.

While no good reason appears why this doctrine should not be applied to situations involving aircraft repairs, the only reported case in which an attempt was made to hold an aircraft repair shop "strictly liable in tort" was not successful. In *Raritan Trucking Corp. v. Aero Commander, Inc.*,[39] the plaintiff took possession of an aircraft in October, 1962. On September 13, 1963, the manufacturer issued a service bulletin to correct a possible landing gear strut extension which could prevent the landing gear from locking in an "up" position. The court said:

> Part I of the bulletin called for inspection of the strut within the next 25 hours' flight time, while Part II of the bulletin specified modifications to prevent future strut overextension. . . .
> On October 16, 1963, Continental [the servicer of the aircraft] performed Part I . . . and found no over-extension. After this inspection the plane was flown for about 16 hours and made 15 landings with no noted difficulty. On October 25 Continental undertook the modifications required by Part II of the Service Bulletin, and on the very next flight two days later the crash occurred.[40]

At the time of the crash the plane had approximately 275 hours total flying time.

Although allowing the plaintiffs to proceed on a negligence theory, the court affirmed a directed verdict against plaintiffs' theory of strict liability in tort since ". . . no New Jersey case has extended the strict liability theory to a case in which there have been no goods or other property supplied" and the court did not "think that the New Jersey courts would extend strict liability to this case."[41] The court did, however, recognize that many of the same policy considerations supporting strict liability in sale cases were also present under the facts of this case:

> Here we have a similar risk of harm to Raritan, its employees, passengers, and members of the public from the operation of a plane with inoperable landing gear. In turning the plane over to Raritan after repairing it, Continental necessarily represented that the landing gear remained in proper operating condition. And Raritan's reliance was, of necessity, great. Raritan had neither adequate knowledge nor sufficient opportunity to determine if the work on the landing gear had left it in proper operating condition,

[39] 458 F.2d 1106 (3d Cir. 1972).

[40] *Id.* at 1109.

[41] *Id.* at 1113.

and thus had to rely upon the skill, care, and reputation of Continental.[42]

Even though these similar elements were present, the court was ". . . convinced that the application of strict liability by the New Jersey courts in this case cannot be predicted with great assurance."[43]

What the result of this case may have been if the doctrine of "implied warranty for workmanlike service" had been presented to the court, or if the court had felt justified in making the initial discussion itself without some indication from the New Jersey courts, is only speculative. As distinguished from repairs, an overhaul more closely resembles the manufacture of a new product and there is authority to support strict liability in this situation.[44]

However, there is yet another factor peculiar to aviation that has neither existed nor been discussed in any reported case, the written certification or representation of airworthiness by a repairman in compliance with the requirements of the Federal Air Regulations for a one hundred hour or annual inspection.

C. *An Express Warranty of Airworthiness*

§ 91.69 provides that "no person may operate an aircraft unless, within the preceding twelve calendar months, it has had—(1) An annual inspection in accordance with Part 43 of this chapter and has been approved for return to service by a person authorized by § 43.7 of this chapter. . . ." This Section further provides that aircraft carrying persons for hire or used for flight instructions for hire must also receive a one hundred hour inspection.

§ 43.7 provides in part:

> The holder of a mechanic certificate or an inspection authorization may approve an aircraft, air frame, aircraft engine, propeller, or appliance for return to service as provided in Part 65 of this chapter.

In turn, § § 65.81, 65.85 and 65.87 provide that a certified mechanic may return to service or "sign off" an aircraft or component part in connection with a one hundred hour inspection and § 65.95

[42] *Id.* at 1114.

[43] *Id.*

[44] In Craig v. Burch, 228 So. 2d 723 (La. App. 1969), a defendant who had recapped a tire was held strictly liable to a car owner and a passenger.

provides that the holder of an inspection authorization may "sign off" the work performed on an aircraft or component in connection with an annual inspection.

§ 43.11 then provides in part that if the aircraft or component is returned to service following an annual or one hundred hour inspection, the repairman must certify in writing in the maintenance record of the equipment being returned to service as follows: "I certify that this aircraft has been inspected in accordance with (insert type) inspection and was determined to be in airworthy condition."

What effect this certification would have on the liability of the certifying repairman has not yet been determined. However, it could reasonably be argued that the certification is an express warranty of airworthiness imposing strict liability upon the certifying repairman. Certainly this concept should strengthen the arguments that could be advanced concerning the "implied warranty of workmanlike service" discussed earlier.

As can be seen, there remains a vast, unplowed and perhaps fertile field of potential liability in negligence and strict liability, both directly and vicariously, against the segments of the aviation industry involved in the inspection, maintenance, repair and overhaul of aircraft and their various components.