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IFR—THE LIABILITY OF THE AIRFRAME AND COMPONENT MANUFACTURER

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THIS PAPER will discuss the potential liability of the airframe and component part manufacturer for wrongful death, personal injuries, and property damage which are proximately caused by a defect, malfunction, or failure of the airframe or any of the component parts designed, manufactured, or assembled by any vendor, and installed in the aircraft at the time of the accident. A cause of action against either the airframe or component manufacturer may be based on common law theories of negligence, breach of express or implied warranty, or upon the doctrine of strict liability in tort.

I. DEFENDANTS

When the accident investigation produces evidence of a specific mechanical, structural, or design defect that can be attributed to an airframe manufacturer, the responsibility of the airframe manufacturer is clearly original, and that manufacturer should be joined as a defendant. In other instances, the accident may reveal evidence of a design defect or structural failure of a component part, such as an engine, altimeter, or rudder cable. In that situation, the manufacturer of that component part may bear original responsibility for the defect, and should be joined in the lawsuit. However, the manufacturer of the airframe may also be held responsible for defects in any of the component parts of an airplane.¹ Thus, the plaintiffs in an action arising out of a component part failure have a choice in many jurisdictions of proceeding against the manufacturer of the defective component, the airframe manu-

¹ 8 AM. JUR. 2d *Aviation* § 133 (1963).

facturer, or both. In *Boeing v. Brown*,² the United States Court of Appeals for the Ninth Circuit held that a manufacturer who buys and installs a component which has been manufactured by another is subject to the same liability as though it were the component manufacturer.

The question of whether or not the manufacturer of a product incorporating a component part made by another has a duty to do more than test and inspect the component varies among the jurisdictions. There are indications that the trend is toward the rule of full responsibility. For example, *Boeing v. Brown*,³ held that the airframe manufacturer has the same duty as the component manufacturer to exercise reasonable care in the design and construction of the component part, as well as in testing and inspection when it is installed.

A plaintiff proceeding on a warranty theory may find an obstacle to his joinder of the component manufacturer as a defendant. In *Goldberg v. Kolsman Instrument Corp.*,⁴ a New York Court held that an airframe manufacturer's implied warranty of fitness ran to, and in favor of, a passenger, despite lack of contractual privity, but the implied warranty of the manufacturer of a defective altimeter did not. It should be noted, however, that New York law still provides for a direct action against a manufacturer of a component part based on a negligence theory.⁵

II. LIABILITY BASED ON NEGLIGENCE

There is general agreement that the manufacturer of an airframe or a component part has the duty of ordinary and reasonable care in the design and manufacture of his product.⁶ This theory of liability is well expressed in the case of *Trans-World Airlines v. Curtis Wright Corp.*,⁷ a case in which the issues centered around the liability of an engine manufacturer for negligence in the manu-

² 291 F.2d 310 (9th Cir. 1961).

³ *Id.*

⁴ 12 N.Y.2d 432, 240 N.Y.S.2d 592 (1963).

⁵ *Id.*

⁶ 8 AM. JUR. 2d *Aviation* § 133 (1963).

⁷ 1 Misc. 2d 477, 148 N.Y.S.2d 284 (1955), *aff'd without opinion*, 2 App. Div. 2d 666, 153 N.Y.S.2d 546, *appeal denied*, 2 App. Div. 745, 153 N.Y.S.2d 566 (1956).

facture of the engine. The court held that the manufacturer of articles or component parts which are inherently dangerous when negligently made may be held directly liable to the ultimate user for any injuries he may sustain as a result of an accident attributable to a defect in the component.

The modern trend supports the maintenance of a cause of action in negligence due to a defectively designed product. For example, an airframe manufacturer was recently held liable for wrongful death damages due to a negligently designed and installed seatbelt, seat, and seat track. These defective parts combined to cause the death of a forty-two year old man from a ruptured mesenteric artery in an otherwise survivable accident.⁸ The court drew upon a long line of authority in the automobile field in holding that the manufacturer's duty of care includes construction of a reasonably crashworthy aircraft.

III. LIABILITY BASED ON BREACH OF WARRANTY

A manufacturer of an airplane or component part may also be held liable for damages on the theory of breach of express warranty. Express warranties have been found in advertisements and brochures designed to induct customers to purchase a particular aircraft or component part, as well as from conversations with sales representatives. These representations usually deal with the safety of a particular aircraft or part and have been held to be express warranties that may give rise to liability.

An action may also arise against an airframe or component manufacturer on a breach of implied warranty. It has been held that where the article is of such a character that when used for the purpose for which it was made it is likely to be a source of danger to many people if not properly designed and fashioned, the manufacturer is liable for breach of implied warranties to persons whose use is contemplated, including automobile passengers.⁹ The jurisdictions appear to be split on whether or not privity of contract is required to maintain such an action.

The potential benefits to a claimant of grounding a cause of

⁸ *Eichstedt v. Cessna Aircraft Co.*, No. 28,209 (2d Jud. Dist. Nev. Aug. 30, 1977).

⁹ *Baxter v. Ford Motor Co.*, 168 Wash. 456, 12 P.2d 409 (1932).

action in a theory of warranty is that such an action eliminates the need of establishing negligence in the design or manufacturing process. In wrongful death cases, however, a minority of states do not consider a breach of warranty to be a "wrong" under their wrongful death statutes.

A representative case involving breach of warranty is *Goldberg v. Kolsman Instrument Corp.*,¹⁰ which concerned a defective altimeter. The court held that the manufacturer of the airframe had made an implied warranty of fitness for intended use which ran in favor of all intended users. As noted above, however, the court refused to hold the component manufacturer responsible to an injured passenger on an implied warranty theory.

IV. STRICT LIABILITY

By far the most useful theory of liability for plaintiffs is the doctrine known as strict liability in tort. By now, most jurisdictions have adopted, at a minimum, the standard imposed by Section 402(a) of the Second Restatement of Torts.¹¹ Section 402(a) was enacted following the California Supreme Court decision of *Greenman v. Yuba Power Products, Inc.*,¹² which held that a manufacturer is strictly liable in tort when an article he places on the market, knowing it is to be used without inspection for defects, proves to have a defect that causes injury to a human being.

The California courts have continued to develop and expand the doctrine of strict liability in tort by enlarging the concept of what constitutes an actionable defect. In the case of *Cronin v. J.B.E. Olson Corporation*,¹³ California had clearly dispensed with Section 402(a)'s requirement that the defect be "unreasonably dangerous" before a cause of action based on strict liability could arise. On January 16, 1978, in the case of *Barker v. Lull Engineering Company, Inc.*,¹⁴ the California Supreme Court again extended the doctrine of strict liability in tort in a decision of far reaching implications. In the *Barker* case, the court was dealing with a question of defective design, and decided "that a product is

¹⁰ 240 N.Y.S.2d 592 (1963).

¹¹ RESTATEMENT (SECOND) OF TORTS § 402(a) (1965).

¹² 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963).

¹³ 8 Cal. 3d 121, 501 P.2d 1163, 104 Cal. Rptr. 433 (1972).

¹⁴ 20 Cal. 3d 413, 573 P.2d 443, 143 Cal. Rptr. 225 (1978).

defective in design either 1) if the product has failed to perform as safely as an ordinary consumer would expect when used as intended or in a reasonably foreseeable manner, or 2) if in light of the relevant factors, that, on balance, the benefits of the challenged design are outweighed by the risk of danger in such design."¹⁵ This is a very significant expansion of the strict liability concept because a manufacturer will now be held liable if his products fail to satisfy reasonable consumer expectations.

A further example of the modern trend toward expanding the concept of defect is the recent case of *Rudisale v. Hawk Aviation*.¹⁶ In *Rudisale*, the trial court held that a fixed base operator that rented an airplane with no oil in the engine had rented a "defective product" which gave rise to liability on a theory of strict liability in tort, rather than negligence. The plaintiff's burden of proof in a strict liability action is far less than his burden in a negligence case: he must merely show that 1) he was injured while the article was being used in an intended or foreseeable manner; 2) the injury was the result of a defect in design or manufacture; and 3) the plaintiff was unaware of the defect which made the article unsafe for such use.¹⁷

Recently, a few courts have held that hard landings or crashes are "foreseeable" uses of an airplane, and that strict liability may be imposed if the aircraft is designed or manufactured so that it is "unsafe" in a foreseeable accident. This doctrine of "crashworthiness" has long been applied in the automotive field and is starting to find acceptance in the aviation industry as well. For example, *Self v. General Motors Corporation*¹⁸ held that while collisions may not be the normal or intended use of any automobile, the fact that automobiles are frequently involved in collisions during the course of normal use is so widely known that vehicle manufacturers must consider accidents to be reasonably foreseeable occurrences, and design their products accordingly. The parallel to aviation is evident.

¹⁵ *Id.*

¹⁶ [1978] AV. L. REP. (CCH) § 17,713 (Dist. Ct. for San Juan Cty., N.M. 1977).

¹⁷ *Greenman v. Yuba Power Products*, 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963); *Pike v. Frank G. Hough Co.*, 2 Cal. 3d 465, 467 P.2d 229, 85 Cal. Rptr. 629 (1970).

¹⁸ 42 Cal. App. 3d 1, 116 Cal. Rptr. 575 (1974).

V. PROBLEMS OF CONTRIBUTION AND INDEMNITY

The plaintiff in a products liability action involving both an airframe manufacturer and a component manufacturer must be aware of the doctrines of contribution and indemnity. The application of these concepts is often of great tactical significance.

Indemnity may arise by contract or implication under the common law. Under indemnity, where one party has incurred liability, he may recover all he has been forced to pay from another person who is found to be primarily responsible. Indemnity will usually apply only where the party seeking reimbursement is without active fault. As an example, a retailer, held liable in strict liability because of a defective label on a product, might obtain indemnity from the manufacturer-labeller.

At common law there was no right of contribution among joint tort-feasors. Any judgment debtor could be held for the whole amount. This is changed by statute in many states, e.g. the Uniform Contribution Among Joint Tortfeasor Act.¹⁹ Under the Act the judgment is usually divided arithmetically by the number of tort-feasors held, with those whose liability is derivative or vicarious, i.e., principal and agent, being counted as one part. In some jurisdictions both the common law rule and the strict division rule have been replaced by a concept of "equitable contribution," where the respective ultimate shares of each defendant as to each other are determined on the basis of comparative fault.²⁰

It is vital for the plaintiff practitioner to know which contribution rule is followed in the jurisdiction where the case is pending, as many times strategy is dictated more by inter-defendant relationships than by the strength of the plaintiff's case. Care must also be taken in determining how many "sides" or sets of defendants there really are. A jurisdiction may permit the comparative responsibility among defendants to be determined in the main action,²¹ and if the plaintiff has not joined other potentially responsible parties, they may be joined in the original proceeding by the defendant(s). The defense, therefore, in a very real sense, can dictate the parties in the plaintiff's case.

¹⁹ 12 UNIFORM LAWS ANNOT. 57 (1975).

²⁰ See *Kohr v. Allegheny Airlines*, 504 F.2d 400 (1974), *cert. denied*, 421 U.S. 978 (1975).

²¹ *American Motorcycle v. Superior Court*, 20 Cal. 3d 578 (1978).

VI. CONCLUSION

In all aviation accidents where pilot error is not the clear cause of the accident, responsible counsel must examine the potential liability of the airframe and component manufacturers. Thorough and complete preparation prior to filing is urged, to avoid the dragnet effect of filing against the airframe and component manufacturers needlessly. Plaintiffs have available a formidable arsenal of weapons, including the doctrines of negligence, warranty, and strict liability, as recently expanded by *Barker*,²² but defendants have recently been provided with a long needed shield in the doctrine of comparative fault among defendants.

²² *Barker v. Lull Engineering Company, Inc.*, 20 Cal. 3d 413, 573 P.2d 443, 143 Cal. Rptr. 225 (1978).

