

Ontario Court Of Appeal Determines That GARA Is Not Applicable In Ontario Proceeding

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Case Alert: *Thorne v. Hudson*, 2017 ONCA 208

The *General Aviation Revitalization Act of 1994*, Pub. L. 103-298, Aug. 17, 1994, 108 Stat. 1552 (49 U.S.C. 40101 note) ("GARA") is an American federal statute that imposes an 18-year final limitation period on all civil actions against certain aviation manufacturers. The Ontario Court of Appeal recently considered this statute's application following an appeal by an American engine manufacturer.

Thorne v. Hudson, 2016 ONSC 5507 is an unsuccessful summary judgment motion brought by an aircraft engine manufacturer. The motion was brought within proceedings that follow a multi-fatality aircraft accident during a flight from Oshawa, Ontario to the United States. The subject aircraft was outfitted with two engines which were manufactured in the United States 39 years prior to the date of loss. During the planned flight one of the engines failed, and the aircraft crashed in Dunkirk, New York. The engine manufacturer brought the summary judgment motion on the basis that the claims against it were barred pursuant to GARA given the age of the failed engine. In dismissing the summary judgment motion, the Ontario Superior Court determined that GARA did not apply. The court's decision was appealed by the engine manufacturer.

The Ontario Court of Appeal found that the motion's judge did not err in finding that the heart of the claim against the manufacturer was negligent misrepresentation and faulty repair instructions that were purportedly received and relied upon in Ontario where the engine maintenance occurred. Therefore there was no error in finding that the applicable law is of that province. In dismissing the appeal the appellate court also suggested that even if the law of another jurisdiction, such as New York, applied to the litigation then GARA would still have no application to the Ontario proceedings given the nature of the claims against the manufacturer. It is still uncertain whether GARA would apply to bar claims against an aircraft engine manufacturer if the crux of the claims were negligent design and/or negligent manufacture. This question was left open by the Court of Appeal for another day.

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