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BERGER SINGERMAN LITIGATORS PROVE THAT THE GENERAL AVIATION REVITALIZATION ACT OF 1994 APPLIES TO FOREIGN ACCIDENTS

July 16, 2017

MIAMI, FL – July 17, 2017 – Berger Singerman represented The Piper Aircraft Corporation Irrevocable Trust to victory in an insurance subrogation matter involving an allegedly defective Piper PA-31-350 Chieftain aircraft that was designed, manufactured, and sold by the now-bankrupt company, The Piper Aircraft Corporation.

The facts involving the team's victory were relatively straightforward. The assignee of multinational insurance companies of the aircraft charter operator, Keystone Air Services Ltd. and pilot, who paid out money on behalf of its insureds to satisfy claims of the aircraft's passengers who were injured when the aircraft crashed in Manitoba, Canada in 2000, brought a one-count claim for subrogation alleging that the aircraft was defective. The one count complaint against the trust sought contribution for all payments the insurance companies allegedly made for the loss, and for pre-judgment interest, fees and costs, totaling in excess of $2.7 million. The focus was that the defendant trust, standing in the shoes of the bankrupt company, was financially responsible for the loss on a theory of contributory negligence claiming the proximate cause of the loss was the failures to: (i) use reasonable care in the design, manufacture, and distribution of the aircraft; (ii) warn users that the aircraft was not adequately designed and manufactured for its intended use; (iii) test the aircraft; and (iv) comply with government standards for fuel tank drains. Eventually, the insurance companies' main theory of negligence centered on the alleged actions and failures by the bankrupt company that caused the right inboard fuel tank of the aircraft to take in a substantial amount of water that froze a flapper valve in a closed position and prevented fuel from flowing to the right engine, which resulted in fuel starvation that caused the right engine to stop producing power and the pilot to lose control of the aircraft.

The trust, a post-bankruptcy claims resolution trust formed after the bankruptcy of the Piper Aircraft Corporation, In re Piper Aircraft Corporation, Case No. 91-31884-BKC-RAM, denied all allegations of causation and asserted several affirmative defenses, including that the claims were barred by the General Aviation Revitalization Act of 1994 ("GARA").

GARA prohibits lawsuits based on claims for general aviation product liability that are brought more than eighteen years after the date of delivery of the aircraft and/or component to the first purchaser or lessee. Here, the aircraft that was the subject of this insurance subrogation action was manufactured by Piper Aircraft Corporation in 1977, and was first sold the same year. In the year 2000, twenty-three (23) years later, the aircraft crashed. Based on the face of the pleadings alone, the trust argued that the lawsuit was entirely precluded and preempted by GARA and should be dismissed with prejudice.

On June 29, 2017, Magistrate Judge Torres agreed with the trust, and entered a nineteen page Report and Recommendation against the insurance companies recommending to District Judge King that GARA applied to entirely bar the claim. Intact Insurance Co. et al. v. The Piper Aircraft Corporation Irrevocable Trust, Case No.

15-cv-24792-JLK (S.D. Fla. Jun. 29, 2017). In finding that GARA applied, the court rejected the insurance companies' arguments that: (1) but for a channeling injunction, the lawsuit would have been filed in Canada, beyond the reach of GARA's statutory provisions; and (2) the application of GARA would be inequitable, unfair, and violate the insurance companies' constitutional rights.

The court rejected both of these arguments, first finding that there was no support other than conclusory statements that the requirement to bring suit in the Southern District of Florida was in some way "inequitable." The court noted that but for the trust and the trust's channeling injunction which required all suits be brought in the Southern District of Florida, it would be impossible for the insurance companies to file any lawsuit against the bankrupt company, whether in Canada or some other foreign jurisdiction. And even if the court determined that Canadian law should govern, GARA's statute of repose would still bar the suit because of the Supremacy Clause of the United States Constitution.

As to the insurance companies' second "hail mary" argument, the court explained why that argument "rings hollow," noting that the Supreme Court recently recognized that "statutes of repose are enacted to give more explicit and certain protection to defendants" that "a defendant should be free from liability after the legislatively determined period of time." Judge Torres therefore concluded that a valid statute of repose effectively negates the existence of any further civil liability as to that particular defendant, here as to the trust.

This decision marks the first time in the Southern District of Florida that the GARA statute has been applied to entirely bar a claim involving a foreign accident and the first time ever that it has been applied against a post-confirmation bankruptcy claims resolution trust. Although since the passage of GARA many courts have eroded its usefulness and its exceptions have almost made its purpose unavailing, the recent opinion solidifies that GARA still applies.

James G. Gassenheimer led the team which consisted of Ashley D. Bruce and Deborah B. Talenfeld, with assistance by Ilyse M. Homer and David Archer.

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