

IN THE SUPREME COURT OF THE STATE OF DELAWARE

FAIRCHILD AIRCRAFT	§
INCORPORATED,	§
	§ No. 629, 2001
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
CLEMENCE MICHAUD, individually	§ C.A. No. 00C-06-156
and as personal representative of the	§
Estate of Jean Provencher, Deceased,	§
and LYNE STRICKER-BOULANGER,	§
individually, as mother and natural	§
guardian of GINGER STRICKER, a	§
minor, and as personal representative of	§
the Estate of Walter Stricker, and	§
HANULRICH STRICKER, SR.,	§
	§
Plaintiffs Below-	§
Appellees.	§

Submitted: January 4, 2002
Decided: January 11, 2002

Before HOLLAND, BERGER, and STEELE, Justices.

ORDER

This 11th day of January 2002, it appears to the Court that:

(1) The defendant-appellant, Fairchild Aircraft Incorporated (FAI), has petitioned this Court, pursuant to Supreme Court Rule 42, to accept an appeal from an interlocutory order of the Superior Court dated

November 16, 2001. The Superior Court's order denied FAI's motion to dismiss on both theories advanced by FAI.

(2) The record reflects that the plaintiffs' husbands were the pilot and co-pilot, respectively, of a plane that crashed shortly after takeoff on June 18, 1998 near Montreal. Everyone on board died. Plaintiffs filed suit against FAI and others. Plaintiffs alleged that the brake assemblies in the plane overheated, which caused an explosion in the plane and resulted in the crash. As to FAI specifically, Plaintiffs alleged that the airplane flight manual, to which the pilots referred when a specific warning light in the plane illuminated, did not adequately inform the pilots of the possibility of a brake fire.

(3) FAI moved to dismiss on two grounds. First, FAI contended that it was not the manufacturer of the airplane but merely acquired the assets of the manufacturer pursuant to an order of bankruptcy. As such, FAI contended that it had no post-sale duty to warn. Second, FAI contended that, even if it had a post-sale duty to warn, the plaintiffs' claims are barred by the federal statute of repose found in the General Aviation Revitalization Act of 1994 (GARA). The Superior Court denied both of these arguments.

(4) FAI filed its application for certification to take an interlocutory appeal in the Superior Court on November 28, 2001. Although the Superior Court questioned whether its denial of FAI's motion to dismiss in fact established a legal right as required by the Supreme Court Rule 42, it concluded that its decision not to dismiss plaintiffs' claims against FAI as time-barred under GARA involved a substantial issue establishing a legal right and presented an issue of first impression. The Superior Court therefore granted FAI's application for certification solely on the applicability of GARA.

(5) Applications for interlocutory review are addressed to the sound discretion of this Court. In the exercise of its discretion, this Court has concluded that the application for interlocutory review should be refused.

NOW, THEREFORE, IT IS HEREBY ORDERED that the within application for an interlocutory appeal be REFUSED.

BY THE COURT:

/s/ Carolyn Berger
Justice