



FLIGHT-WATCH



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ECONOMIC LOSS DOCTRINE MAY BAR CLAIMS OF DAMAGE TO AIRCRAFT CAUSED BY A NEGLIGENT INSPECTION

I.

Introduction

The economic loss doctrine is a doctrine of law followed in many jurisdictions. Under this doctrine, if a manufacturer or maintenance repair facility has an obligation to inspect an aircraft as reduced to writing under contract, and if the facility breaches a contract duty which causes damage or destruction of the aircraft, the economic loss doctrine may preclude actions against the manufacturer or repair facility sounding in tort (for example, simple negligence law). The existence of the economic loss doctrine is important because the aviation law practitioner will confront this doctrine, most especially in circumstances where aircraft suffer damage while flying in or over a jurisdiction that applies the economic loss doctrine. This issue of *Flightwatch* will discuss decision rendered by the Georgia Court of Appeals that highlights and illuminates the elements of the Economic loss doctrine.

II.

Maintenance History and Damage

A Gulfstream G-IV aircraft suffered an inflight engine fire while flying over the State of Utah in 1999. Because of the engine fire, the aircraft was required to make an unscheduled landing in Colorado. The undisputed evidence in the record was that chafing between an unclamped alternator feeder cable and a metal fuel line resulted in electrical arcing that burned a hole in the fuel line. A fire then ensued in the engine compartment of the aircraft.



Gulfstream aircraft are subject to three kinds of service bulletins. The first type of service bulletin is a Customer Bulletin (CB) to inform customers that a particular airplane component or system is not fully performing and may create an unsafe condition. Compliance with a CB is mandatory. The second kind of service bulletin is an Alert Customer Bulletin (ACB) which requires corrective action within a shorter period of time than a CB. The third type of service bulletin is an Aircraft Service Change (ASC) which involves modifications or upgrades to parts or components installed in the aircraft. An ASC may be optional, recommended or mandatory, depending upon the circumstances.

In 1995, Gulfstream discovered that an alternator feeder cable and hydraulic pump pressure line in the engine compartment were prone to possible chafing. Gulfstream issued two service bulletins: (1) Alert Customer Bulletin No. 17 (ACB 17); and (2) Aircraft Service Change No. 372 (ASC 372). ACB 17 man-

dated a one-time inspection for the chafing condition and specifically required compliance with ACS 372. In turn, ACS 372 required the installation of clamps on the alternator feeder cable to eliminate chafing.

At the time these service bulletins were issued in 1995, the aircraft was owned by Dresser Industries. On January 12, 1996, Dresser recorded in the aircraft's logbooks that it had complied with ACB 17. The aircraft mechanic who performed the procedure indicated in the aircraft logbooks "that there was no chafing noted." This applied to both the left and right engine alternator feed cables. However, Dresser did not comply with ASC 372 since the anti-chafing clamps required by ASC 372 were never installed in the aircraft.

III.

The Waiver of Liability

In 1997, a subsidiary of William Wrigley, Jr. Company purchased the aircraft. As part and parcel of the transaction, a pre-purchase inspection of the aircraft was conducted by K-C Aviation, Inc. in Dallas, Texas. Prior to conducting the pre-purchase inspection, K-C Aviation and the purchaser entered into an agreement that included a two-page document captioned "Aircraft Pre-Purchase Waiver of Liability and All Express and Implied Warranties" ("Waiver Agreement"). On page 1 of the Waiver Agreement, the following language was struck through by the parties attendant to executing the document:

The Waiver of Liability...expressly includes liability and responsibility for defects, damages or other problems with respect to the aircraft or its component parts or accessories that were not discovered by K-C Aviation, Inc. during the evaluation of the aircraft due to its own negligence...

Likewise, on page 2, paragraph 4 of the Waiver Agreement the following language was stricken through:

...specifically waive any other obligation or liability on the part of K-C Aviation or its directors, officers, employees, or agents, whether express or implied in fact or in law of any nature whatsoever.

Then, in paragraph number 5 of the Waiver Agreement, the parties inserted the following language:

It is expressly understood and agreed that in undertaking the evaluations contemplated hereby, K-C Aviation expressly denies any liability or responsibility for undiscovered defects, damages or other problems with the aircraft or its component parts or accessories whether or not the same should have been discovered by K-C Aviation in the evaluation...[T]he undersigned hereby waives any and all rights and causes of action that may arise as a result of the evaluation and any reports or comments of K-C Aviation in connection therewith, whether such right or cause of action be for incidental, special or consequential damages, personal injuries, property damage, repair costs or liabilities of any other kind or nature which the undersigned or its agents, contractors or employees could assert against K-C Aviation, and *unless caused by K-C Aviation's negligence...*

The language inserted in the Waiver Agreement made it clear that the parties adopted a "negligence standard" in the execution by K-C Aviation in its inspection of the aircraft.

IV.

The First Alleged Negligent Inspection

K-C Aviation carried out its inspection of the aircraft and rendered a report. The report indicated that there was non-compliance with CBs 71, 81A, 82 and 83. By not including ACB 17 in the non-compliance list, the report correctly noted the aircraft's records showed there had been compliance with ACB 17; however, it did not include ACS 372 in the non-compliance list. In other words, the report by K-C Aviation did not disclose that the owner of the air-



craft had failed to install clamps on the alternator feeder cables to eliminate chafing.



V.

The Second Alleged Negligent Inspection

About a year and a half after the K-C Aviation report, the aircraft had a logbook review conducted by Gulfstream Appleton. The owner of the aircraft requested that Gulfstream Appleton perform certain repair and inspection work on the aircraft in Gulfstream's Wisconsin facility. Gulfstream Appleton produced a research list filled in with information concerning compliance with ASCs. The research list produced by Gulfstream Appleton charted compliance with CBs that had a date printed on the list of "11/17/98" but it contained handwritten notations of compliance dates that came *after* the printed date.

VI.

Legal Action For Economic Loss

The insurance carrier that paid the claim to repair the aircraft made claims on behalf of the owner to recover money spent effecting repairs to the aircraft. These claims were made against K-C Aviation and also Gulfstream Appleton. Both K-C Aviation and Gulfstream Appleton brought motions for summary judgment before Judge Hermann Coolidge of the Chatham State Court. Judge Coolidge denied the motion for summary judgment as to K-C Aviation and then denied a motion for reconsideration of that motion. On the same day Judge Coolidge denied the motion for reconsideration with respect to K-C Aviation, he also, in a separate order, denied summary judgment to Gulfstream Appleton. Both K-C Aviation and Gulfstream Appleton made an application to the

trial court for a certificate of immediate review. After the certificate was granted, K-C Aviation and Gulfstream Appleton made applications for interlocutory appeal to the Georgia Court of Appeals which were granted.

VII.

Ruling of the Georgia Court of Appeals

The Georgia Court of Appeals reversed Judge Coolidge for failure to grant summary judgment to K-C Aviation. The logic behind the decision of the Georgia Court of Appeals was that the parties had entered into a contract adopting a negligence standard for the duty of K-C Aviation to conduct an inspection of the aircraft. Having done so, the parties had entered into a contract dealing with the duties and obligations of K-C Aviation in conducting the pre-purchase inspection. Because the parties had addressed the issues in contract, the trial court should not have granted the motion for a summary judgment with respect to tort claims, since the economic loss doctrine barred those claims.

On the other hand, with regard to Gulfstream Appleton, the trial court was affirmed in denying summary judgment for the reason that the preparation of the research list was not described in the contract between aircraft owner and Gulfstream Appleton, since there was no contract addressing the duties of Gulfstream Appleton, the claims of negligence brought by the insurance company as the entity pursuing the claims of the owner were not barred by the economic loss doctrine. In conducting its analysis of the economic loss doctrine, the trial court reasoned that since the engine fire took place over the state of Utah, the economic loss doctrine as decided by the state of Utah would apply with respect to tort claims asserted by the insurance carrier against the maintenance facilities. Insofar as there was a written agreement between the aircraft owner and K-C Aviation, Texas law would govern concerning the validity and interpretation of the disclaimer and release provisions of the Waiver Agreement.

VIII.

Conclusion

In summary, because K-C Aviation did have a written agreement in place adopting a negligence standard, the trial court found that claims against K-C Aviation for damage to the aircraft arising in tort were barred by the economic loss doctrine. On the

other hand, with regard to the inspection at Gulfstream Appleton, because there was no contract in place and because Gulfstream Appleton did render a research list that it was not required to create by contract, then Gulfstream Appleton did undertake duties that would be governed by tort law, there being no written contract to delineate the scope of those duties.

It appears that there are several lessons airmen, aircraft mechanics and aircraft maintenance facilities can learn from this case. First of all, in order to avail oneself of the economic loss doctrine defense there needs to be a written contract in place describing the scope and extent of the duties of a repair facility. If a written contract is in place, and something untoward occurs, then the repair facility is in the position to argue that the contract addresses the duties, not tort law. The second thing we can learn from this case is that if a facility undertakes to conduct work on an aircraft, but does not reduce to writing the scope of the repair and gratuitously creates a research list, this inspection by the repair facility, although not described in the contract, will or may be governed by general tort law and defeat any defense that may be advanced by the repair facility under the economic loss doctrine. This case suggests that for repair facilities inspecting aircraft, it is desirable to have in place a contract describing the nature and extent of the inspection so that if the aircraft does sustain damage that is alleged to flow from a negligent inspection, the repair facility may be able to avail itself of the defense of the economic loss doctrine and prevent the plaintiff from prevailing in a suit against the facility for damages in tort.

Attorneys for the appellant in the case were Christopher D. Britt and Brent J. Savage of Savage, Turner, Pinson & Karsman of Savannah. Counsel for the appellees were Fred S. Clark of Clark, Clark & Steinmetz of Savannah, Georgia and also Jon A. Kodini and Jeffrey J. Williams of the Law Offices of Jon A. Kodini in Santa Monica, California. Another party participating in the case was represented by J. Arthur Mozley of Mozley, Finlayson & Loggins of Atlanta, Georgia.

Gulfstream Aerospace Services Corp. v. United States Aviation Underwriters, Inc., ____ Ga.App. ____, Case No. A06A0660 (July 27, 2006).



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