

[Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—AIRCRAFT AND WATERCRAFT—D. Alaska: Summary judgment denied on design and manufacturing defect claims in plane crash case, \(Dec. 18, 2020\)](#)

Products Liability Law Daily Wrap Up

[Click to open document in a browser](#)

By Joshua Frumkin, Esq.

The court noted that the manufacturers of a short takeoff and landing (STOL) kit erroneously relied on non-Alaskan law in making their arguments, which did not avail them.

In an action concerning the cause of a fatal plane crash, the federal district court in Alaska denied in part the STOL kit manufacturers' motion for summary judgment relating to the passengers' alternative safer design argument and their manufacturing defect claim. The court also refused to rule on the passengers' abandoned theory concerning the plane's center of gravity, choosing instead to grant the passengers leave to amend as to that theory to align it with their case in chief ([*Specter v. Texas Turbine Conversions, Inc.*](#), December 15, 2020, Burgess, T.).

In April 2014, Recon Air Corporation (RAC) installed a STOL kit on a De Havilland DHC-3 "Otter" airplane owned and operated by Rainbow King Lodge, Inc. The STOL kit was manufactured by Texas Turbine Conversions, Inc. (TTC). In September 2015, the plane crashed shortly after takeoff; one passenger was killed in the accident. The estate of the decedent and a surviving passenger (collectively, the passengers) sued RAC and TTC (collectively, the manufacturers) in September 2017. The passengers alleged that the plane was unreasonably dangerous due to the design and execution of the STOL kit modification, and that this caused the pilot to lose control of the plane. In July 2020, TTC filed a motion for summary judgment on select "raised-but-not-argued-claims," which RAC joined.

Alternative safer design. The court denied the manufacturers' motion for summary judgment on the passengers' alternative safer design claim. To maintain an alternative safer design claim under Alaska law, the passengers needed to show that they were injured and that their injury was proximately caused by the product's design. The manufacturers then bore the burden to prove by a preponderance of the evidence that the benefits of the product's design outweighed its risks, including the mechanical feasibility of safer designs. The Alaska Supreme Court adopted this standard to lessen the burden of the plaintiff's prima facie case and to place the burden of analyzing complicated technical issues on the manufacturer.

The manufacturers argued that the passengers should be precluded from asserting that an alternative safer design of the plane was available, because the passengers failed to provide evidence for that assertion. The manufacturers relied on Oregon law in making that argument. The court rejected that source as inapposite, as it placed the burden of proof on the consumer, contrary to the applicable Alaska law. The court also noted that the Oregon authority was no longer good law. In response, the passengers argued that the alternative design theory was a response to the manufacturers' assertion that the benefits of the design outweighed the inherent risk of danger, and that the burden of proof rested on the manufacturers. The court agreed, and ruled that the passengers did not have the burden to raise or refute arguments that the manufacturers might make regarding the risk-benefit of the STOL kit design. The court also held that it would be premature for it to evaluate the merits of a risk-benefit analysis that the manufacturers had yet to pursue. Finally, the court noted that the risk-benefit analysis would not be dispositive on the passengers' claims, as the passengers did not need to prevail on this line of argumentation to prove their strict liability design defect claim.

Manufacturing defect allegation. The court also denied the manufacturers' motion for summary judgment on the passengers' allegation of a manufacturing defect. Alaska law recognizes an "unavoidable" overlap between manufacturing and design defects, and a "rigid delineation of the two categories is neither necessary nor desirable." The manufacturers argued that the passengers should be precluded from asserting that there was a manufacturing defect in the plane because the passengers failed to present evidence for it. The passengers argued that because Alaska law recognizes an "overlap" between design and manufacturing defects, they did not need to present separate arguments relating to their manufacturing defect claim. Furthermore, the passengers noted that the plane did not meet the consumer expectations test, which supported the existence of a manufacturing defect. The court found that Alaska law does not require consumers to specifically allege that a product was manufactured defectively to prevail on a strict liability claim; defects are defects, no matter their source. The court explained that the manufacturers had relied on the Restatement (Third) of Torts to make their argument on this issue in spite of their own admission that Alaska had not adopted the Restatement's line of reasoning here.

Additionally, the manufacturers argued that the passengers' experts failed to support the allegations of a specific paragraph in the complaint that listed numerous allegations beyond those concerning a manufacturing defect. The manufacturers' motion did not list the specific portions of the paragraph at issue. Based on that ambiguity in the manufacturers' motion, as well as the conflation of manufacturing and design defects in Alaska law, the court refused to rule on summary judgment that no manufacturing defect existed. There were some elements of the design that could be considered manufacturing defects, the court mused, and the broad ruling that the manufacturers sought would incorrectly preclude the passengers from arguing those points.

Plane center-of-gravity theory. The court ordered the passengers to amend their complaint to modify their alleged-but-dropped theory that the plane's center of gravity, which allegedly was shifted by the STOL kit, caused or contributed to the crash. Both the manufacturers and the passengers agreed that the theory was abandoned. Regardless, the court chose to grant the passengers the opportunity to align this theory with the live theory of the case: that the plane had a tendency to turn, roll, and yaw in certain scenarios, and that the modifications to the plane caused the pilot to lose control due to rudder limitations. The court thus withheld its decision on summary judgment as to this third issue until the passengers had the opportunity to amend the complaint.

The case is No. [3:17-cv-00194-TMB](#).

Attorneys: Alisa R. Brodkowitz (Schroeter Goldmark Bender) for Jolyn L. Specter. Marc Gerhard Wilhelm (Richmond & Quinn PC) for Rainbow King Lodge, Inc. John B. Thorsness (Clapp, Peterson, Tiemessen, Thorsness & Johnson, LLC) for Texas Turbine Conversions, Inc. Gary A. Zipkin (Guess & Rudd P.C.) for Recon Air Corp.

Companies: Rainbow King Lodge, Inc.; Texas Turbine Conversions, Inc.; Recon Air Corp.

Cases: CourtDecisions DesignManufacturingNews AircraftWatercraftNews AlaskaNews