

Aircraft Accident/ Incident
Liability and Insurance Issues
With an Emphasis On Home-
Built Aircraft

EAA AIR VENTURE-OSHKOSH
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Introduction

- “Two deadly crashes before yesterday’s opening of a popular fly-in of experimental aircraft underscore just how deadly this hobby can be. . . . In addition to this week’s deaths, the National Transportation Safety Board’s database shows 69 experimental aircraft have crashed in the last 12 months. Those crashes claimed 16 lives and seriously injured 12 others.”

- The Seattle Post-Intelligencer, Thursday, July 8, 1999 (referring to the 1999 Northwest Experimental Aircraft Fly-In).

“The Federal Aviation Administration said 22,000 experimental-class airplanes are registered in the United States and about 1,000 are added each year. Records show that the accident rate for them is **only one percent higher** than those for certified airplanes.”

- The Portland Oregonian, Sunday, April 5, 1998.

Home-Built Statistics . . . Crashes

- In 1999, FAA records showed that there were **19,643 registrations** on file for amateur built airplanes.
- NTSB records show that between January 1, 1991 and July 23, 2001, there have been **2,169 reported accidents** involving amateur built aircraft.
- Of those accidents, **625 were fatal.**

Issues In the Hypothetical:

1. Sales Contract Exculpatory Agreement
2. Insurance Policy Exclusion
3. Fuel Tank Modification
4. Faulty Fuel Pump Included in Kit
5. Friend's Possible Negligence
6. Owner's Possible Liability

Background of General Aviation Liability

A. Pilot Liability

B. Aircraft Owner/ Operator Liability

C. Manufacturer Liability

- negligence
- strict liability
- breach of express or implied warranties

Background of General Aviation Liability

D. Government Liability

- FAA, the National Weather Service, and the military.
- Federal Tort Claims Act.

B. NTSB Investigations of Air Crashes

C. Insurance Coverage Issues

FAA Certification for Home-built Aircraft:

- **The 51% Rule.** Someone can qualify for a home-built airworthiness certificate if they have done more than 50% of the fabrication or assembly of the aircraft and “undertook the construction project solely for their own education or recreation.” FAR 21.191(g).
- 51% Rule does not mean that the manufacturer of the kit has no liability once an amateur has done more than 50% of the work.
- FAA Inspection.

Manufacturer Product Liability

- **Kit Manufacturer:** sells plans and parts; may sell plans only.
- **The Homebuilder:** usually does not sell mass-produced product to the public. Responsibility as a designer/ manufacturer may be incurred by the homebuilder by deviating from the parts and plans of the kit manufacturer.

Manufacturer Product Liability

*Non-Commercial Manufacturer Liability

- Product Liability if the homebuilder was negligent in building the aircraft (negligence rather than strict product liability).
- Liability will probably increase with the more modifications in parts and designs that the homebuilder makes. **Hunter v. United States, 961 F. Supp. 266 (M.D. Fla. 1997).**

Home-Built Aircraft Insurance

- Hull and Liability Insurance; Factors for Determining Insurability:
 - Pilot's license with current medical and biennial flight review
 - Pilot's flight experience (pilot logbooks)
 - Pilot's age
 - Requirements for high-performance aircraft much stricter

Effect of GARA (General Aviation Revitalization Act) on Home-built Aircraft

- GARA limits claims against general aviation manufacturers for any claims that arise more than **18 years** after manufacture.
- Application to Homebuilt Aircraft.

Exculpatory Agreements

- Shield a seller of a home-built aircraft from liability once the aircraft has been sold.
- Courts typically look unfavorably at exculpatory agreements. Should be unambiguous as to its scope and effect.
- Courts often do not allow commercial sellers to avoid liability through exculpatory agreements. Mullan v. Quickie Aircraft Corp., 797 F.2d 845 (10th Cir. 1986).

Practical Tips

- Modifications can increase the home-builder's liability.
- Modification after FAA certification could affect insurance coverage.
- Consider having a purchaser sign an exculpatory agreement: the more specific and unambiguous the agreement, the better.
- Thoroughly read any exculpatory agreement that you are considering signing.
- Insurance should be in line with financial