CASE NO. SC03-1601

In the
Supreme Court of Florida

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,

Plaintiff-Appellant,

v.

AMERICAN AVIATION, INC.,

Defendant-Appellee.

On Certified Questions of Law from the United States Court
of Appeals for the Eleventh Circuit
Case Number: 02-14828-AA

PROFILE AVIATION SERVICES, INC.,

Plaintiff-Appellant,

v.

AMERICAN AVIATION, INC.,

Defendant-Appellee.

On Certified Questions of Law from the United States Court
of Appeals for the Eleventh Circuit
Case Number: 02-14830-CC

CONSOLIDATED MOVANTS' INITIAL BRIEF ON QUESTIONS OF LAW CERTIFIED BY THE ELEVENTH CIRCUIT

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CERTIFIED QUESTIONS PRESENTED

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II. Whether the "economic loss" doctrine of Florida applies if there is no contractual relationship between the Plaintiffs and Defendant.

III. Whether the "economic loss" doctrine of Florida applies to the facts of this case with regard to damage to the total aircraft as opposed to mere damage to the landing gear under the "other property" exception.

IV. Whether the providing of certified mechanical services falls under the category of the "professional services" exception to the "economic loss" doctrine of Florida or under some related services exception.

V. Whether the negligent representation claim in this case provides an exception to the "economic loss" doctrine of Florida.

STATEMENT OF JURISDICTION

On September 4, 2003, the Eleventh Circuit Court certified five questions of law to this Court pursuant to section 25.031 of the Florida Statutes and Rule 9.150 of the Florida Rules of Appellate Procedure. This Court accordingly has jurisdiction under article V, section 3(b)(6) of the Florida Constitution.

STATEMENT OF THE CASES

On May 10, 2002, Profile, as owner of a Beechcraft KingAir 100 aircraft, registration N924RM ("Aircraft"), and Indemnity, as the Aircraft's insurer subrogated to the rights of Profile, filed actions against American (a Federal Aviation Administration ("FAA")-certified repair station in Brooksville, Florida) in the United States District Court for the Middle District of Florida, Tampa Division. (R_p-1-1-pp. 1-10; R_i-1-1-pp. 1-10.)[1] Plaintiffs' actions alleged that the negligence, negligence *per se*, negligent misrepresentation, and breach of warranty by American caused damage to the Aircraft when the landing gear failed to extend during a landing. (R_p-1-1-pp. 2-9; R_i-1-1-pp. 2-9.)

Plaintiffs specifically alleged that the Aircraft was damaged as the result of the improper reinstallation of the lower thrust bearing of the Aircraft's right landing

[1] "R_i" signifies Indemnity's Record on Appeal, while "R_p" signifies Profile's Record on Appeal. Thus, "R_p-1-1-pp. 1-10" refers to Profile's Record on Appeal, Volume 1, Document 1, pages 1-10.

gear actuator by American's FAA-certified mechanics during American's inspection and maintenance of the landing gear prior to Profile's purchase of the Aircraft. (R_p-1-1-pp. 2-4, Ex. A; R_i-1-1-pp. 2-4, Ex. A.) Plaintiffs further alleged that Profile had relied on the certifications made by American's FAA-certified mechanics in the Aircraft's logbook that the inspection and maintenance of the landing gear were performed in accordance with the Aircraft's manual and Federal Aviation Regulations.[2] (R_p-1-1-pp. 3, 7, Ex. A; R_i-1-1-pp. 3, 7, Ex. A.)

The district court dismissed Plaintiffs' tort claims with prejudice finding that they were barred by Florida's economic loss rule. (R_p-1-7-pp. 3-8, 10; R_p-1-15-pp. 3-6; R_i-1-8-pp. 3-8, 11; R_i-1-16-pp. 4-6.) The court dismissed Plaintiffs' breach of warranty claims due to a lack of privity, except that Profile was granted 10 days to amend its breach of warranty claim (R_p-1-15-pp. 4-6; R_i-1-16-pp. 5-6), which Profile in good faith could not do. Plaintiffs appealed to the United States Court of Appeals for the 11th Circuit. On September 4, 2003, the 11th Circuit certified 5 questions of law to this Court and delayed its consideration of this case pending this Court's resolution of the certified issues.

To assist this Court, the entire 11th Circuit record, along with the parties' briefs filed in the 11th Circuit were also transmitted to this Court. This initial brief is

[2] The relevant Aircraft logbook entry is attached as Exhibit A to Plaintiffs' complaints.

filed pursuant to Rule 9.150 and within the mandated time for briefs under Rule 9.150(d).

Statement of Facts

Plaintiffs' dismissed tort claims for damage to the Aircraft caused by American's negligent reassembly of the Aircraft's landing gear and negligent misrepresentation of the condition of the landing gear are based on the following facts which must be taken as true. *Mazzoni Farms, Inc. v. E.I. DuPont De Nemours and Co.*, 761 So. 2d 306, 309 fn. 3 (Fla. 2000) (addressing questions of law certified from the 11th Circuit)**.**

Aircraft Maintenance: The Federal Aviation Regulatory Scheme.

The instant actions arise out of the negligent maintenance of the Aircraft at a Class 3 aircraft repair station. (R_p-1-1-pp. 1-3, Ex. A; R_i-1-1-pp. 1-3, Ex. A.) Certified mechanics and repair stations are assigned a rating (*e.g.*, Class 1, 2, 3, or 4) signifying the type of aircraft maintenance they are legally authorized to perform in six areas (airframe, powerplant, propeller, radio, instruments, and accessories). The Class 3 rating here means that the repair station employs mechanics who are legally authorized to repair the airframes of all-metal small aircraft, turbine engines, radar equipment, instruments using gyroscopic principles and motivated by air pressure or electrical energy, and electronic accessories that depend on the use of an electron tube transistor or similar device. 14 C.F.R. § 145.59. (A-pp. 15-16.)To

become FAA-certified, a mechanic (apart from meeting age and English language requirements if working in the United States) must be a graduate of a certified aviation maintenance technician school (or have substantial practical experience, anywhere from a minimum of 18 to 30 months, consistent with the rating sought) and within a 24-month period pass a written test on the construction and maintenance of aircraft and the federal regulations and provisions governing mechanics, as well as an oral and a practical skills test. 14 C.F.R. §§ 65.71, 65.75, 65.77, 65.79. (A-p. 8, A-p. 9, A-p. 10, A-p. 11.)[3]

An FAA-certified mechanic who performs maintenance on an aircraft, airframe, engine, propeller, or appliance—such as landing gear—must follow the methods, techniques, and practices prescribed in the aircraft's maintenance manual and perform the maintenance in such a manner that the condition of the aircraft or part worked on will be at least equal to its original or properly altered condition. 14 C.F.R. § 43.13. (A-p. 7.) Moreover, when maintenance has been performed on an aircraft, airframe, engine, propeller, appliance, or component part, an FAA-certified mechanic must give approval before the aircraft, airframe, engine, propeller, appliance or component part is returned to service. 14 C.F.R. §§ 43.3, 43.7, 43.13. (A-pp. 1-2, A-p. 4, A-p. 7.) While generally only the FAA Administrator is

[3] "A" signifies the Appendix of pertinent federal aviation regulations that is attached to the body of this brief. Thus, "A-p. 9" refers to the Appendix, page 9.

authorized to grant such approval, this authority is delegated to a very limited class of persons, which includes certified mechanics. 14 C.F.R. § 43.7. (A-p. 4.)

Before returning the aircraft, airframe, engine, propeller or appliance to service, the certified mechanic must also make an entry in the aircraft's logbook regarding the inspection and maintenance performed. 14 C.F.R. § 43.5. (A-p. 3.) Once the required maintenance is performed, an aircraft cannot be operated by any person until the required logbook entry is prepared by a certified mechanic. 14 C.F.R. § 91.407(a). (A-p. 12.) Thus, an aircraft owner relies on these maintenance records to determine, among other things: whether the required maintenance on the aircraft, or particular part thereof, has occurred; whether the aircraft can be returned to service (if it is airworthy); whether the aircraft may even be operated; and when the next maintenance on the aircraft, or particular part thereof, must occur. *See* 14 C.F.R. §§ 43.7, 43.9, 43.13, 91.407. (A-p. 4, A-pp. 5-6, A-p. 7, A-p. 12.)

American's FAA-Certified Mechanics Perform Inspection And Maintenance On Aircraft's Landing Gear.

On or about November 22, 1996, American's FAA-certified mechanics, pursuant to a contract to which Plaintiffs were not parties, performed the required 30-month end play inspection and maintenance on the landing gear of the Aircraft, at American's Class 3 aircraft repair station in Brooksville, Florida. (R_p-1-1-pp. 1-3, Ex. A; R_i-1-1-pp. 1-3, Ex. A.) During the course of American's inspection and

maintenance, American's mechanics removed the Aircraft's right main gear landing actuator and lower thrust bearing. (R_p-1-1-p. 3, Ex. A; R_i-1-1-p. 2, Ex. A.) Upon completion of the inspection and maintenance and reinstallation of the landing gear, American's mechanics certified in the Aircraft's logbook that the inspection and maintenance were in accordance with the Aircraft's maintenance manual and Federal Aviation Regulations. (R_p-1-1-pp. 2-3, Ex. A; R_i-1-1-pp. 2-3, Ex. A.)

Profile Purchases The Aircraft; Relies on American's November Inspection And Maintenance Of The Landing Gear.

Profile purchased the Aircraft subsequent to American's November inspection and maintenance. (R_p-1-1-p. 2; R_p-1-9-pp. 1-2; R_i-1-1-p. 2; R_i-1-10-p. 2.) Plaintiffs reasonably relied on American's inspection and maintenance certifications for the landing gear contained in the Aircraft's logbook. (R_p-1-1-pp. 3, 7, Ex. A; R_i-1-1-pp. 3, 7, Ex. A.)

Aircraft Severely Damaged When Right Main Landing Gear Fails To Operate Properly.

On May 14, 1999, the Aircraft was severely damaged when the right main landing gear failed to extend during a landing. (R_p-1-1-p. 3; R_i-1-1-p. 3.) The cause of the failed landing gear was that American had installed the lower thrust bearing of the right main landing gear actuator backwards. (R_p-1-1-p. 3; R_i-1-1-p. 3.) Instead of being installed with the "Thrust" marking facing away from the housing as required by the Aircraft's maintenance manual, the lower thrust bearing

was reversed and installed backwards with the "Thrust" marking facing towards the housing. (*Id*.)

Plaintiffs could not have reasonably discovered that American had negligently reinstalled the lower thrust bearing of the right main landing gear prior to the damage to the Aircraft on May 14, 1999. (R_p-1-1-p. 4; R_i-1-1-p. 3.)

Profile and Indemnity File Actions Against American.

On May 10, 2002, Profile and Indemnity (the Aircraft's insurer which paid portions of the Aircraft's repair costs and is thereby subrogated to Profile's rights against American to that extent) each filed a four-count complaint in the United States District Court for the Middle District of Florida, Tampa Division, against American alleging that the damage to the Aircraft exceeded $75,000 and resulted from American's mechanics improperly reinstalling the lower thrust bearing of the Aircraft's right landing gear actuator during the course of the November 1996 inspection and maintenance. (R_p-1-1-pp. 1-10; R_i-1-1-pp. 1-10.) Specifically, Plaintiffs sought to recover for negligence (Count I), negligence *per se* (Count II), negligent misrepresentation (Count III), and breach of warranty (Count IV). (R_p-1-1-pp. 4-9; R_i-1-1-pp. 4-9.)

Thereafter, American moved to dismiss Plaintiffs' complaints arguing that Plaintiffs' tort claims (Counts I-III) were barred under Florida's economic loss rule and that no breach of warranty action (Count IV) could be maintained due to

Plaintiffs' lack of privity with American. (R_p-1-3-pp. 1-9; R_i-1-3-pp. 1-9.) Plaintiffs filed responses to American's motion, maintaining that Florida's economic loss rule was inapplicable. (R_p-1-5-pp. 1-2; R_i-1-6-pp. 3-11.) Plaintiffs further maintained that they were intended third-party beneficiaries of the express warranties made by American in the Aircraft's logbook. (R_p-1-5-pp. 1-2; R_i-1-6-p. 11.)

District Court Dismisses Plaintiffs' Entire Complaints With Prejudice.

On July 1, 2002, relying primarily on *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc.*, 620 So. 2d 1244 (Fla. 1993), the district court (The Honorable Elizabeth A. Kovachevich) dismissed with prejudice Plaintiffs' claims for negligence, negligence *per se*, and negligent misrepresentation (Counts I-III) based on Florida's economic loss rule. (R_p-1-7-pp. 3-8, 10; R_i-1-8-pp. 3-8, 11.) Plaintiffs filed motions for reconsideration in which they argued *inter alia* that the court's July dismissal orders were based upon a fundamental error of fact—namely, that Profile had a direct contractual relationship with American. (R_p-1-9-p. 1-2; R_i-1-9-pp. 1-2; R_i-1-10-p. 2.) On August 6, 2002, the district court denied Plaintiffs' motions for reconsideration, finding the lack of a contractual relationship "irrelevant" to its dismissal of Plaintiffs' tort claims under the economic loss rule. (R_p-1-15-pp. 4, 6; R_i-1-16-pp. 4, 6.) The court then dismissed Plaintiffs' entire complaints with prejudice, with the exception that Profile was granted 10 days

to amend its breach of warranty count to allege, if it could, that it was an intended third-party beneficiary of the contract between American and the Aircraft's prior owner. (R_p-1-15-pp. 5-6; R_i-1-16-pp. 5-6.)

Profile could not in good faith amend its complaint to meet the requirements of an intended third-party beneficiary under Florida law.[4] Thus, on August 30, 2002, Profile and Indemnity both filed notices of appeal from the above orders. (R_p-1-16-pp. 1-2; R_i-1-19-pp. 1-2.) In response to Profile's motion seeking clarification of whether the August 6, 2002 order pertaining to Profile constituted a final and appealable order, the district court issued an order on September 30, 2002 dismissing Profile's entire complaint with prejudice. (R_p-1-21-pp. 1-2.) Profile then filed another notice of appeal on October 17, 2002. (R_p-1-23-pp. 1-2.)

Circuit Court Certifies Five Questions of Law to the Florida Supreme Court.

After consideration of the parties' briefs, the 11th Circuit court found that there were substantial questions concerning the appropriate Florida law to be applied in this case:

> "We have a doubt as to the correct answers to the following questions of Florida law:

[4] *See Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp.*, 850 So. 2d 536, 544 (Fla. 5th DCA 2003) (holding that a third-party may sue under an intended beneficiary theory only if the contracting parties manifest, or the contract clearly expresses, an intention to "primarily" and "directly" benefit the third-party).

I. Whether the "economic loss" doctrine of Florida applies to alleged torts if the Defendant has provided services to a product rather than has sold a product.

II. Whether the "economic loss" doctrine of Florida applies if there is no contractual relationship between the Plaintiffs and the Defendant.

III. Whether the "economic loss" doctrine of Florida applies to the facts of this case with regard to damage to the total aircraft as opposed to mere damage to the landing gear under the "other property" exception.

IV. Whether the providing of certified mechanical services falls under the category of the "professional services" exception to the "economic loss" doctrine of Florida or under some related services exception.

V. Whether the negligent representation claim in this case provides an exception to the "economic loss" doctrine of Florida."

Accordingly, the court certified these five questions of law to this Court and deferred its consideration of the consolidated appeals until this Court's resolution of the certified issues.

Standard of Review

Under section 25.031, Florida Statutes (2002), a federal circuit court of appeals may certify questions of law to this Court if that state court's case law has not set forth any "clear controlling precedents" on those issues of law. *See, eg.*, *Mosher v. Speedstar Div. of AMCA Intern., Inc.*, 675 So.2d 918, 919 (Fla. 1996). Questions of law are reviewed *de novo* by this Court. *Media General*

Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit, 840 So.2d 1008, 1013 (Fla. 2003).

SUMMARY OF THE ARGUMENT

I. In its recent "economic loss" rule jurisprudence, this Court has expressly manifested its "determination to limit the application and reach of the economic loss rule," and to make clear that the rule does not apply to non-product liability negligence actions involving parties that have no contractual relationship. *Moransais v. Heathman*, 744 So. 2d 973, 982-83 (Fla. 1999) (finding that "[economic loss] rule was primarily intended to limit actions in the product liability context"); *accord Comptech Int'l, Inc. v. Milam Commerce Park, Ltd.*, 753 So. 2d 1219, 1226 (Fla. 1999). Accordingly, the economic loss rule should not apply to this non-product liability case alleging the negligent rendition of aircraft maintenance services and parties who do not have a contractual relationship.

II. Alternatively, even if the economic loss rule could apply to these non-product liability cases involving the negligent performance of maintenance services and parties having no contractual relationship, the following three recognized exceptions to the rule apply here:

A. <u>The "other property" exception</u>.

Because American's negligent reinstallation of the Aircraft's landing

gear caused damage to "other property"—namely parts of the Aircraft other than the landing gear—the rule does not apply to these claims. *Comptech*, 753 So. 2d at 1223-27. The negligently installed landing gear is a functionally unique component of the aircraft and accordingly maintains a separate identity from the other parts of the aircraft; indeed, the landing gear is separately manufactured, separately serviced, and independently certifiable under the FAA regulatory scheme.

B. The negligent rendering of professional services exception.

Here, because Plaintiffs' tort claims involve the negligent rendering of services by American's professional FAA-certified mechanics (whose professional qualifications meet stringent federal regulatory standards), the economic loss rule has no application. *Moransais*, 744 So. 2d at 983 ("[T]he economic loss rule does not bar a cause of action against a professional for his or her negligence even though the damages are purely economic in nature. . . .").

C. The negligent misrepresentation exception.

Plaintiffs have properly alleged such negligent misrepresentation by American—an FAA-certified repair station in the business of supplying information as recognized in Section 552 of the Restatement (Second) of Torts.

Accordingly, this Court should answer the 11th Circuit's certified questions as follows:

I. Florida's economic loss doctrine does not apply to the negligent

rendition of maintenance services to an aircraft.

II. Florida's economic loss doctrine does not limit tort recovery where there is no contractual privity between the tortfeasor and victim and, as here, suit is based on the negligent rendition of maintenance services.

III. In addition, the economic loss rule cannot apply to this case because American's negligent reinstallation of the Aircraft's landing gear caused damage to "other property", i.e. parts of the Aircraft other than the landing gear.

IV. In addition, the economic loss rule cannot apply to this case because American negligently performed "professional services" -- namely, FAA-certified mechanical inspection and maintenance procedures involving a high degree of expertise and training mandated by federal law.

V. In addition, the economic loss rule cannot apply to this case because the false entries made by American in the Aircraft's federally-mandated maintenance log constitute a negligent misrepresentation on which Profile relied to its detriment.

ARGUMENT

I.

THE ECONOMIC LOSS RULE DOES NOT APPLY TO THESE NON-PRODUCT LIABILITY TORT ACTIONS INVOLVING PARTIES WITH NO CONTRACTUAL RELATIONSHIP. (Certified Questions I and II).

A. History Of Florida's Economic Loss Rule.

The economic loss rule is a "'court-created doctrine'" which originated in

the product liability context involving products that were defectively designed or manufactured.[5] *Moransais v. Heathman*, 744 So. 2d 973, 979 (Fla. 1999) (quoting *Southland Constr., Inc. v. Richeson Corp.*, 642 So. 2d 5, 7 (Fla. 5th DCA 1994)).

A review of the history of the economic loss rule in Florida over the last 15 years shows an evolution and then a devolution whereby the rule was initially expanded beyond its product liability roots to parties having no contractual relationship, and then restricted and narrowed by recent Florida decisions which control the instant cases. *See generally* Charles R. Walker, *Moransais v. Heathman and the Florida Economic Loss Rule: Attempting to Leash The Tort-Eating Monster*, 52 Fla. L. Rev. 769 (2000).

1. Prior Expansion Of Florida's Economic Loss Rule.

Illustrative of the earlier expansive view of Florida's economic loss rule are *Casa Clara Condominium Association, Inc. v. Charley Toppino and Sons, Inc*, 620 So. 2d 1244, 1245-48 (Fla. 1993) (economic loss rule barred condominium owners' negligence, product liability and other claims for defective concrete against

[5] *See also Pritchett v. E.I. Du Pont De Nemours & Co.*, 1994 WL 150834 at 3 (M.D. Fla. April 12, 1994) ("In Florida . . . the elements of the negligence cause of action in a product liability case are: 1. The manufacturer must have a legal duty to design and manufacture a product reasonably safe for use; 2. The manufacturer must fail to comply with that duty; 3. The plaintiff must have an injury that is legally caused by the manufacturer's breach of duty; and 4. The plaintiff must have suffered damages.").

concrete supplier with whom the owners had no contract) and *Airport Rent-A-Car, Inc. v. Prevost Car, Inc.*, 660 So. 2d 628, 629-31 (Fla. 1995) (economic loss rule barred bus owner's negligence and strict liability claims for a defective product against bus manufacturer with whom owner was not in privity).

While these decisions at least involved product liability-type claims, other earlier decisions applied the economic loss rule between parties who contracted for the rendition of services. *See, e.g., AFM Corp. v. S. Bell Tel. and Tel. Co.*, 515 So. 2d 180 (Fla. 1987) (tort claims barred between parties who contracted for telephone advertising); *McDonough Equip. Corp. v. Sunset Amoco West, Inc.*, 669 So. 2d 300, 302 (Fla. 3d DCA 1996) (tort claims barred between parties who contracted for removal and replacement of underground gas tanks).

In the cases at bar, the district court placed primary reliance on *Casa Clara*. (R_p-1-7-pp. 3-6; R_i.-1-8-pp. 3-6.) In that case, condominium owners sued a concrete supplier (Toppino), with whom they were not in privity, asserting that their condos were damaged because the concrete used in construction of the condos was defective. *Casa Clara*, 620 So. 2d at 1245. The owners sought to recover economic damages based on negligence, product liability, violation of the applicable building code and breach of common law implied warranty. *Id*. The trial court dismissed all counts against Toppino, and the condominium owners appealed. *Id*. The appellate court applied the economic loss rule and held that,

because no person was injured and no other property damaged, the homeowners had no tort causes of action against Toppino. *Id*. The appellate court further held that Toppino, as a supplier, had no duty to comply with the building code. *Id*.

On appeal to this Court, the homeowners argued that limiting them to a contractual remedy against the concrete supplier would be "unfair" because they lacked privity with the supplier. *Casa Clara*, 620 So. 2d at 1246. This Court in a 4-3 opinion rejected this contention, finding that the economic loss rule applied and barred all the owners' tort claims. *Id*. at 1247. This Court further held that the "other property" exception to the rule was inapplicable because the homeowners bargained for and purchased finished homes, not their various components. *Id*. Thus, the defective concrete "became an integral part of the finished product and . . . did not injure 'other' property." *Id*.

Casa Clara is also notable for Justice Shaw's opinion concurring in part and dissenting in part in which two other Justices (Kogan and Barkett) concurred:

> [The economic loss rule] works well when the loss is suffered by one who is privy to the contract and involves loss that was the subject matter of the contract. *It works a mischief, however, where as in this instance the injured party is not privy to the contract but injury to third parties is reasonably foreseeable.* The condominium owners here suffered more than the loss of concrete; they suffered the loss of their homes, a foreseeable consequence of faulty concrete.
>
> * * *
>
> While I agree with the majority opinion that parties who have freely bargained and entered a contract relative to a particular subject matter should be bound by the terms of that contract including the distribution of loss, *I feel that the*

> *theory is stretched when it is used to deny a cause of action to an innocent third party who the defendant knew or should have known would be injured by the tortious conduct*. Toppino knew that the concrete that was the subject matter of the bargain between Toppino and the general contractor would be incorporated into homes that would be bought and occupied by innocent third parties.

Casa Clara, 620 So. 2d at 1249 (emphasis added). Justice Barkett also filed a separate opinion concurring in part and dissenting in part in which Justice Kogan concurred:

> [S]ome applications of the economic loss doctrine may have acceptable viability. But surely it stretches reason to apply the doctrine in this context to deny these homeowners any remedy.
>
> * * *
>
> Moreover, I cannot subscribe to the majority's view that the defective concrete has not damaged "other property" in the form of the houses' individual components.

Id. at 1248.

2. Current Restriction Of Florida's Economic Loss Rule.

In 1997, the status of Florida's economic loss rule led one Florida appellate court to lament that "'[t]he economic loss rule is stated with ease but applied with great difficulty.'" *Delgado v. J.W. Courtesy Pontiac GMC-Truck, Inc.*, 693 So. 2d 602, 606 (Fla. 2d DCA 1997) (citation omitted). Recognizing the difficulty, this

Court in 1999 began efforts to curtail the rule, which it readily admitted had been applied "to situations well beyond our original intent." *Moransais v. Heathman*, 744 So. 2d 973, 980 (Fla. 1999); *accord Comptech Int'l, Inc. v. Milam Commerce Park, Ltd.*, 753 So. 2d 1219, 1224 (Fla. 1999).

a. The *Moransais* Decision.

In *Moransais v. Heathman*, 744 So. 2d 973, 974 (Fla. 1999), a prospective homeowner contracted with an engineering corporation (BCI) to perform a pre-purchase home inspection. Two licensed engineers who were BCI employees performed the inspection. *Id*. There was no direct contractual relationship between the homeowner and the individual engineers. *Id*. The homeowner maintained that in deciding to buy the home he had relied on the engineers' inspection, and that after purchasing the home he uncovered defects that made it uninhabitable. *Id*. at 974-75. The homeowner sued the seller for fraud and breach of contract, BCI for breach of contract, and BCI's two engineers for professional negligence seeking to recover purely economic losses. *Id*. at 975.

The trial court dismissed the homeowner's claims against the two engineers as barred by the economic loss rule. *Moransais*, 744 So. 2d at 975. The appellate court affirmed but, in light of a conflicting Fifth District holding, *Southland Construction, Inc. v. Richeson Corp.*, 642 So. 2d 5 (Fla. 5th DCA 1994), and "'the continuing uncertainty surrounding the economic loss rule,'" the court certified a

lengthy question to this Court as a matter of "'great public importance.'" *Moransais*, 744 So. 2d at 975 (citation omitted).

This Court divided the appellate court's certified question into two issues:

- Where a purchaser of a home contracts with an engineering corporation, does the purchaser have a cause of action for professional malpractice against an employee of the engineering corporation who performed the engineering services?

- Does the economic loss rule bar a claim for professional malpractice against the individual engineer who performed the inspection of the residence where no personal injury or property damage resulted?

Moransais, 744 So. 2d at 974.

In answering the first question, this Court established that engineering was a profession, according to the definition of profession found in Florida's professional malpractice statute of limitations, Section 95.11. *Moransais*, 744 So. 2d at 976 (noting that a profession within the meaning of Section 95.11 is "'any vocation requiring at a minimum a four-year college degree before licensing is possible in Florida'" (citation omitted)). This Court then looked to prior case law and the statutory scheme regulating professionals in general and found that they indicated that individual professionals in Florida are to be held responsible for their negligent acts. *Id*. at 977-79. Thus, this Court concluded that the homeowner could assert a cause of action against the individual engineers for their negligence in rendering professional services "despite the lack of a direct contract" between the

individual engineers and the homeowner, and even though plaintiff had contract remedies against the seller and the engineering company that employed the individual engineers. *Id*. at 975, 984.

This Court then sought to address the second certified question—whether the economic loss rule would bar an action for professional negligence where there are no personal injuries or property damage other than the defects in the home inspected. *Moransais*, 744 So. 2d at 979. After discussing the rule's origins in product liability case law, the court "acknowledge[d] that our pronouncements on the rule have not always been clear and, accordingly, have been the subject of legitimate criticism and commentary." *Id*. at 980. Analyzing the subsequent expansion of the economic loss rule to cases outside the product liability context and citing *AFM Corp.* as an example, Section 1, p. 16, *supra*, the *Moransais* court remarked:

> Unfortunately, however, our subsequent holdings have appeared to expand the application of the rule beyond its principled origins and have contributed to applications of the rule by trial and appellate courts to situations well beyond our original intent.

744 So. 2d at 980. Though this Court stated that the "outcome" in *AFM* was "sound," it admitted that "we may have been unnecessarily over-expansive in our reliance on the economic loss rule as opposed to fundamental contractual principles." *Id*. at 981.

The *Moransais* court then discussed *Casa Clara*, noting the decision "was not unanimous, especially as to our characterization of 'other property.'" 744 So. 2d at 981. This Court observed that "[m]ore recently this Court has recognized the danger in an unprincipled extension of the [economic loss] rule" and that it has "declined to extend the economic loss rule to actions based on fraudulent inducement and negligent misrepresentation." *Id*. at 981-82 (citing cases which "demonstrate our recent determination to limit the application and reach of the economic loss rule").

In ultimately holding that "the economic loss rule does not bar a cause of action against a professional for his or her negligence even though the damages are purely economic in nature," *Moransais*, 744 So. 2d at 983, this Court explained:

> Today, we again emphasize that by recognizing that the economic loss rule may have some genuine, but limited, value in our damages law, we never intended to bar well-established common law causes of action, such as those for neglect in providing professional services. *Rather, the rule was primarily intended to limit actions in the product liability context . . . and its application should generally be limited to those contexts or situations where the policy considerations are substantially identical to those underlying the product liability-type analysis.* We hesitate to speculate further on situations not actually before us. *The rule, in any case, should not be invoked to bar well-established causes of actions in tort, such as professional malpractice.*

Id. at 983 (emphasis added and footnote omitted).

Additionally, Justice Wells, in a concurring opinion (in which Justice Pariente joined), expressed the unequivocal view that "the economic loss rule should be limited to cases involving a product which damages itself by reason of a defect in the product." *Moransais*, 744 So. 2d at 984. Justice Wells further stated that he would "recede from *AFM Corp*. . . .because that opinion erroneously applies the economic loss rule and has given rise to confusion as to the rule's applicability." *Id*. at 984. Finally, Justice Overton in his lone dissent maintained that this case is "controlled" by *Casa Clara* and that the majority opinion "has effectively overruled . . . *Casa Clara* without saying so." *Id*. at 984-85.

b. The *Comptech* Decision.

Less than four months after *Moransais*, this Court "took another significant step toward restricting the reach of the economic loss rule." Walker, *supra*, at 801. In *Comptech International, Inc. v. Milam Commerce Park, Ltd.*, 753 So. 2d 1219, 1221 (1999), the plaintiff Comptech leased warehouse space from Milam to store its computers. The lease renewal agreement included a provision that Milam would renovate the warehouse while Comptech's computers remained there. *Id*. at 1221. During the course of the renovations, a contractor hired by Milam damaged Comptech's computers. *Id*. Milam also failed to obtain the necessary building permits. *Id*. Comptech sued Milam alleging *inter alia* negligent construction and a violation of Section 553.84 of the Florida Statutes, which allowed for a cause of

action when a person or entity engages in construction without the necessary building permits or violates the building code. *Id*. at 1221-22. The appellate court held that Comptech's negligence claims were barred by the economic loss rule, despite the statutory duty created by Section 553.84, and rejected Comptech's argument that even if the economic loss rule applied, the computers were exempted from the rule under the "other property" exception. *Id*. at 1221.

On appeal, this Court found first that the economic loss rule did not bar Comptech's statutory cause of action. *Comptech*, 753 So. 2d at 1223. The court then considered whether the computers were "other property" under the economic loss rule. *Id*. at 1223-27. Consistent with *Moransais*, this Court noted the economic loss rule's origins in product liability case law and observed that had the courts adhered to the requirements of early cases applying the economic loss rule—namely a product, the product damaging itself, and economic losses—"the confusion that has abounded in this area of the law would have been minimized." *Id*. at 1223-24. The *Comptech* court then quoted extensively and approvingly from *Moransais'* discussion that the economic loss rule should be limited to the product liability context. *Id*. at 1224-25. As the court explained further:

> In *Moransais*, we acknowledged that the economic loss rule has some genuine, albeit limited, value in tort and contract law, and we continue to do so. However, the economic loss rule cannot be used as a barrier to legitimate causes of action whether they be statutory or common law. As we said in *Moransais*, *"the rule was primarily intended to*

> *limit actions in the product liability context, and its application should generally be limited to those contexts."*

Comptech, 753 So. 2d at 1225-26 (emphasis added).

Because the economic loss rule was intended to apply solely within the product liability context, the *Comptech* court noted that there was no need to invoke the "other property" exception in that case which involved a contract for services:

> This case is not a products liability or similar case. The subject of the contract between the parties was not a product but a service. Thus, this case does not involve "other property," as that term was used in *East River* and *Florida Power*.[6] The term is not truly applicable to a situation such as the one before us where the subject of the contract is a service.

Comptech, 753 So. 2d at 1226. Moreover, the court noted that "[e]ven under a *Casa Clara* analysis, the computers are 'other property' and not subject to the economic loss rule." *Id*. at 1226. As the court explained:

> The "product" purchased by Comptech was the renovation of the warehouse. The computers placed in the warehouse were not an integral part of the product and were therefore "other property" under the *Casa Clara* rationale.

Comptech, 753 So. 2d at 1226-27.

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[6] *East River Steamship Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858 (1986) was a product liability case against a manufacturer. *Florida Power & Light Co. v. Westinghouse Electric Corp.*, 510 So. 2d 899 (Fla. 1987) involved a purchaser of nuclear steam generators suing a seller for defects in the generators.

Consistent with these recent limitations imposed on the economic loss rule by this Court, recent Florida appellate court decisions have routinely refused to apply the economic loss rule to cases like the ones at bar, *i.e.*, non-product liability tort actions between parties who lack a contractual relationship.

Thus, in *McLeod v. Barber*, 764 So. 2d 790, 791 (Fla. 5th DCA 2000), the economic loss rule did not apply to tort actions against an insurance agent alleging tortious misconduct by the agent in his efforts to sell life insurance to the plaintiffs. In rejecting the trial court's application of the economic loss rule, the appellate court stated:

> [T]he law is clear that the economic loss doctrine does not apply to tort claims where there is no contractual relationship between the parties. *See Williams v. Bear Stearns & Co.*, 725 So. 2d 397 (Fla. 5th DCA 1998), *rev. denied*, 737 So. 2d 550 (Fla. 1999). Here, since the complaint does not aver that Mr. Barber had a contractual relationship with the McLeods, Florida's economic loss rule cannot form a valid basis for dismissal.

Id. at 792-93 (emphasis added).

In *Williams v. Bear Stearns & Co.*, 725 So. 2d 397 (Fla. 5th DCA 1998), the case on which *McLeod* relied, the economic loss rule did not bar tort claims against three investment advisors "*because those three defendants did not have a contractual relationship with NHL*." *Id*. at 399 (emphasis added). Similarly, in an earlier case (cited with approval in *Moransais*, 744 So. 2d at 984), *Southland Construction, Inc. v. Richeson Corp.*, 642 So. 2d 5, 8 (Fla. 5th DCA 1994), the

economic loss rule was held not to preclude a general contractor from pursuing his tort claim against an engineer with whom the general contractor had no contractual relationship. *See also TransPetrol, Ltd. v. Radulovic*, 764 So. 2d 878, 880 (Fla. 4th DCA 2000) (noting that economic loss "rule does not apply where there is no contract between the parties in litigation"); *Pearson v. Ford Motor Co.*, 694 So. 2d 61, 69 (Fla. 1st DCA 1997) ("The economic loss doctrine precludes *parties to a contract* to recover economic damage resulting from a breach of contract." (emphasis added)).

B. Application To The Facts At Bar.

The parties here did not have a contractual relationship. (R_p-1-1-p. 2; R_p-1-9-pp. 1-2; R_i-1-1-p. 2; R_i-1-10-p. 2.) The instant actions by Profile and Indemnity are not product liability suits. There is no allegation that any product was defectively designed or manufactured. Rather, American negligently inspected, maintained and reinstalled the aircraft's landing gear and negligently misrepresented the condition of the landing gear in the Aircraft's logbook prior to the sale of the Aircraft to Profile. (R_p-1-1-pp. 2-8; R_i-1-1-pp. 2-8.) The Aircraft was damaged because of that negligence when the landing gear failed to extend on landing after it was purchased by Profile. (R_p-1-1-p. 3; R_i-1-1-p. 3.) Accordingly, *Casa Clara* should never have been applied to these cases, and certainly should not apply now when this Court has severely narrowed (if not overruled) its holding.

Indeed, even under the Florida case law as it existed prior to this Court's concerted effort in *Moransais* and *Comptech* to curtail the reach of Florida's economic loss rule, the rule should not apply to the cases at bar. These are not product liability suits (*Casa Clara*, *Rent-A-Car*) and do not involve contracting parties (*AFM* and *McDonough*). In one pre-*Moransais* case, a federal district court in *Value House, Inc. v. MCI Telecommunications Corp.*, 917 F. Supp. 5, 7 (D.D.C. 1996), refused to apply the economic loss rule to bar a suit against MCI for negligent misrepresentation and unjust enrichment with respect to "900" number services, concluding that "the Florida economic loss rule is not yet so broad as MCI describes it." As the court explained:

> [T]he seminal case, *Casa Clara*, a 4-3 decision of the Florida Supreme Court, not only was based on products liability principles, *Casa Clara Condominium Assoc. Inc. v. Toppino*, 620 So. 2d at 1246, but also prompted concern by at least three Justices about expanding the rule and limiting the rights of those genuinely harmed but not contractually protected. *Id*. at 1248 (Barkett, J., concurring in part and dissenting in part); *id.* at 1248-49 (Shaw, J. concurring and dissenting). As Justice Shaw noted, the economic loss doctrine "works a mischief . . . where . . . the injured party is not privy to the contract but injury to third parties is reasonably foreseeable." *Id*. at 1249 (Shaw, J., concurring and dissenting). The instant case involves no faulty products at all, *plaintiffs had no contract with defendants*, and the case may even share elements of cases in which the Florida courts have preserved exceptions to the economic loss doctrine. *See, e.g., A.R. Moyer Inc. v. Graham*, 285 So. 2d 397 (Fla. 1973).[7]

[7] In *A.R. Moyer*, 285 So. 2d at 402, the court found a general contractor *who had no contractual privity* with an architect and engineer was *not* prohibited by the economic loss rule from bringing a claim for negligent performance.

> While Florida law governs here, it must be limited to the contexts in which the Florida courts have applied it, which are substantially different from that involved in this case.

Value House, 917 F. Supp. at 7 (emphasis added).

In any event, *Moransais* and *Comptech* make clear that the economic loss rule is limited to the product liability context, and does not apply to this case involving the negligent rendition of maintenance services and parties who had no contractual relationship. *See also McLeod, Williams, Southland*, and *TransPetrol*, *supra*.

Accordingly, Certified Questions No. I and II should be answered as follows:

I. Florida's economic loss doctrine does not apply to the negligent rendition of maintenance services to an aircraft.

II. Florida's economic loss doctrine does not limit tort recovery where there is no contractual privity between the tortfeasor and victim and, as here, suit is based on the negligent rendition of maintenance services.

C. None of American's Contentions Have Merit.

As set forth in the 11th Circuit's September 4, 2003, certification order (pp. 16-24), American raised numerous arguments as to why the economic loss rule should apply to this case involving the negligent rendition of maintenance services

and an action between non-contracting parties. As set forth below, none have merit.

Cost to Society. American says that if it has to respond in damages for its negligent maintenance activities, it will have to pass the cost on to its customers. This assertion, even if true, makes no legal point. Every party to a commercial dispute (including Profile and Indemnity) could potentially pass on a loss to its customers, but this does not mean that the party whose negligence has caused the injury or damage should be allowed to escape responsibility for its conduct.

American is not a "guarantor." Plaintiffs agree that American is not a "guarantor" of its work. American will be liable only if Plaintiffs prove that American was negligent in its inspection and maintenance of the aircraft and that Plaintiffs were damaged as a result. Nor will Plaintiffs receive a "windfall" if they succeed on their tort claims at trial. Rather, Plaintiffs will recover only for the damages they incurred as a result of American's negligence -- namely, the cost of repairing the Aircraft and/or diminution in value of the Aircraft.

Other entities can be sued. American urges that Plaintiffs can sue other entities, noting a South Carolina suit against another entity allegedly involved in the negligent reinstallation of the landing gear. Again, American's assertion has no legal significance. In *Moransais*, 744 So. 2d at 974-75, the plaintiff had pending actions against the engineering company that employed the individual engineer defendants

as well as the party that sold him the home. Nevertheless, this Court held that the economic loss rule did not bar plaintiff's actions against the individual engineers. *Id*. at 983-84.

Other options. American argues that Plaintiffs could have protected themselves with other options such as the purchase of insurance. Again, American's contention makes no legal point. Profile did purchase insurance, and that is why Indemnity is a co-plaintiff in this action. Indeed, every subrogation case involves a party who protected itself in full or in party by purchasing insurance, but this does not mean that the party whose negligence caused damages to the insured and to the subrogated insurer is excused from the consequences of its negligent acts. *See, e.g., Blake v. Hi-Lu Corp*., 781 So. 2d 1122, 1123-24 (Fla. 3d DCA 2001) (affirming jury verdict for homeowner's insurer on subrogation claim against builder for negligent construction of a home); *Aetna Cas. and Sur. Co. v. Pappagallo Rest., Inc.*, 547 So. 2d 243, 244-45 (Fla. 3d DCA 1989) (ordering trial of automobile insurer's subrogation claim against restaurant for negligent bailment).

Plaintiffs have no contractual remedy. Plaintiffs agree that they have no contractual remedy against American, *i.e.*, they had no contract with American and cannot satisfy the strict Florida law requirements for an intended third-party contract beneficiary. But, as set forth above, this is one more reason why the economic loss ruled does not apply in this case. *McLeod v. Barber*, 764 So.2d

790, 792 (Fla. 5th DCA 2000) ("[T]he law is clear that the economic loss doctrine does not apply to tort claims where there is no contractual relationship between the parties."); *Williams v. Bear Stearns & Co.*, 725 So. 2d 397, 399 (Fla. 5th DCA 1998) (economic loss rule did not bar tort claims against three investment advisors "*because those three defendants did not have a contractual relationship with NHL*." (emphasis added)); *Southland Constr., Inc. v. Richeson Corp.*, 642 So. 2d 5, 8 (Fla. 5th DCA 1994) (economic loss rule did not preclude a general contractor from pursuing a tort claim against an engineer with whom the general contractor had no contractual relationship); *TransPetrol, Ltd. v. Radulovic*, 764 So. 2d 878, 880 (Fla. 4th DCA 2000) (noting that economic loss "rule does not apply where there is no contract between the parties in litigation"); *Pearson v. Ford Motor Co.*, 694 So. 2d 61, 69 (Fla. 1st DCA 1997) ("The economic loss doctrine precludes *parties to a contract* to recover economic damage resulting from a breach of contract." (emphasis added)).

Indeed, in *Southland*, 642 So. 2d at 8, the court cited *A.R. Moyer, Inc. v. Graham*, 285 So. 2d 397 (Fla. 1973), with approval for the proposition that the negligent rendition of services can give rise to a tort action by a foreseeable party with whom the tortfeasor had no contract and who was not a contract beneficiary. *Southland*, 642 So. 2d at 8 (noting a "duty not to injure foreseeable parties not beneficiaries of the contract" (citation omitted)).

II.

EVEN IF FLORIDA'S ECONOMIC LOSS RULE COULD APPLY TO THIS NON-PRODUCT LIABILITY TORT ACTION INVOLVING PARTIES WITH NO CONTRACTUAL RELATIONSHIP, THIS CASE FALLS WITHIN THREE WELL-SETTLED EXCEPTIONS TO THE DOCTRINE.

A. The "Other Property" Exception Applies Here Because American's Negligent Reinstallation of the Aircraft's Landing Gear Damaged Parts of the Aircraft That Are Separate and Distinct From The Landing Gear Itself. (Certified Question III).

Florida's economic loss rule does not preclude a party from recovering in tort where a product damages property other than itself. *Casa Clara Condo. Ass'n, Inc. v. Charley Toppino & Sons, Inc.*, 620 So. 2d 1244, 1246-47 (Fla. 1993). Relying on *Casa Clara*, where defective concrete was incorporated into the condominium buildings, the district court here found that the damage caused to other parts of the Aircraft as the result of American's negligent reinstallation of the landing gear was not damage to "other property" because the landing gear was an "integral part" of the Aircraft. (R_p-1-7-pp. 5-6; R_i-1-8-pp. 5-6.)

The district court's conclusion that the landing gear was like the concrete in *Casa Clara*, is faulty for at least three reasons. First, the defective concrete in *Casa Clara* did not maintain a separate, independent identity apart from other parts of the building. Like butter and eggs blended to make a cake, the concrete blended with other building materials to form a completed condominium. In contrast,

aircraft parts are independent and distinct from one another. Although they work together, they do not lose their separateness or their identity in the Aircraft. Each aircraft part is manufactured and serviced separately from another (aircraft maintenance is divided into six separate areas: airframe, powerplant, propeller, radio, instruments, and accessories), and component parts are interchangeable and independently certifiable as to airworthiness under the FAA regulatory scheme. 14 C.F.R. §§ 43.3, 43.7, 145.59. (A-pp. 1-2, A-p. 4, A-pp. 15-16.) Indeed, in the instant cases, American actually removed the landing gear component for the purposes of an airworthiness inspection separate and apart from the rest of the Aircraft, and later reinstalled it. (R_p-1-1-p. 3, Ex. A; R_i-1-1-pp. 2-3, Ex. A.)

Secondly, the *Casa Clara* court concluded that "house buyers have little or no interest in how or where the individual components of a house are obtained . . . . They bargained for the finished products, not their various components." 620 So. 2d at 1247. Here, however, Profile, as an aircraft owner and Indemnity (as its subrogee) are vitally interested in knowing that each and every component part of the Aircraft, including the landing gear, is in proper working order and serviced in accordance with Federal Aviation Regulations and the Aircraft's maintenance manual. Indeed, the landing gear was inspected, disassembled, and reinstalled by American pursuant to a 30-month end play check specifically required for landing gear by the manufacturer's maintenance and overhaul manual. (R_p-1-1-p. 3, Ex. A;

R_i-1-1-pp. 2-3, Ex. A.) American's negligent reinstallation of the landing gear then damaged not only the landing gear itself, but "other property," *i.e.*, other parts of the Aircraft. (R_p-1-1-p. 3; R_i-1-1-p. 3.) The economic loss rule does not bar Plaintiffs' tort claims for this damage to "other property."

Thirdly, while the court in *Comptech International, Inc. v. Milam Commerce Park, Ltd.*, 753 So. 2d 1219 (Fla. 1999), did not expressly overrule *Casa Clara's* "other property" analysis, the *Comptech* court certainly indicated that this analysis should not be expanded beyond its facts. *Comptech*, 753 So. 2d at 1226 ("The term [other property] is not truly applicable to a situation such as the one before us where the subject of the contract is a service.").

As a final matter, the cases cited to the Circuit Court by American fail to rebut the conclusion that the "other property" exception should apply here. All of these cases (with one exception)[8] involved allegations of a faulty product and not the negligent rendering of services. *See Premix-Marbletite Mfg. Corp. v. SKW Chemicals, Inc.*, 145 F. Supp. 2d 1348 (S.D. Fla. 2001) (defective chemicals); *All Am. Semi Conductor, Inc. v. Mil-Pro Servs., Inc.*, 686 So. 2d 760 (Fla. 5th DCA

[8] *Fishman v. Boldt*, 666 So. 2d 273, 274 (Fla. 4th DCA 1996), a *per curiam* opinion following *Casa Clara*, was decided prior to *Moransais* and *Comptech* which limited the economic loss rule's application to product liability-type cases. Also, there is no indication in *Fishman* of whether the parties were in contractual privity. See more recent case law holding that the economic loss rule does not apply to parties who have no contractual relationship, *supra* pp. 26-27.

1997) (defective programming machine); *Am. Universal Ins. Group v. Gen. Motors Corp.*, 578 So. 2d 451 (Fla. 1st DCA 1991) (defective oil pump); *Pulte Home Corp. v. Osmose Wood Preserving, Inc.*, 60 F.3d 734 (11th Cir. 1995) (defective plywood); *Am. Home Assurance Co. v. Major Tool and Mach., Inc.*, 767 F.2d 446 (8th Cir. 1985) (defective turbine component). Again, the instant actions are suits for the negligent performance of aircraft maintenance services and do not involve a defectively designed or manufactured product.

In light of the foregoing considerations, the Plaintiffs respectfully request that this Court determine that the "other property" exception to the economic loss rule applies to this case, and answer Certified Question III in the affirmative.

B. The "Professional Services" Exception Applies Here Because American's Provision of FAA-Certified Mechanical Services Required a High Degree of Federally-Mandated Expertise and Training. (Certified Question IV).

Another well-recognized exception to the economic loss rule is the negligent performance of professional services. *Moransais v. Heathman*, 744 So. 2d 973 (Fla. 1999) (economic loss rule did not bar a claim for professional negligence against engineers who had conducted a pre-purchase house inspection). As discussed in Section A, pp. 16-20, *supra*, this Court acknowledged in *Moransais* that it "never intended to bar well-established common law causes of action, such

as those for neglect in providing *professional* services." 744 So. 2d at 983 (emphasis added).

The *Moransais* court concluded that the engineers in that case were "professionals," citing *inter alia* the Florida Statute of Limitations (§ 95.11) and the case law decided thereunder establishing that a "professional" is one who requires a four-year degree prior to state licensure. 744 So. 2d at 976. However, this Court has also made clear that this definition of "professional" does not control outside the context of the professional malpractice statute of limitations. *Garden v. Frier*, 602 So. 2d 1273 (Fla. 1992). In *Garden*, this Court made clear that a broader definition of the term "professional" would apply in other contexts:

> We limit the definition of "professional' to the context of the professional malpractice statute [of limitations]. *It is not our intent that this definition be applied to any other reference to "professionals" or "professions" elsewhere* in the Florida statutes, regulations, or rules *or in court cases that deal with issues other than the statute of limitations at issue here.* We recognize that *there may be occasions when courts*, legislators, rulemaking authorities, and others, *may use the terms "profession" and "professional" more broadly* or more narrowly than we do here today. We do not deem it possible to develop a comprehensive list of professions ourselves . . . Some licensing authorities, for example, merely incorporate by reference professional standards developed by agencies or organizations that are not even part of the Florida government.

Garden, 602 So. 2d at 1277 n.9 (emphasis added); *see also* Black's Law Dictionary 1226 (7th ed. 1999) (defining a "professional" as "[a] person who

belongs to a learned profession *or* whose occupation requires a high level of training and proficiency" (emphasis added)).[9]

It is clear that American's highly-skilled and highly-trained FAA-certified mechanics should be deemed professionals and thus encompassed in the *Moransais* holding. To become FAA-certified (apart from minimum age and English language requirements if working in the United States), a mechanic must have graduated from a certified aviation maintenance technician school or have substantial practical experience (anywhere from a minimum of 18 to 30 months) consistent with the rating sought. Such a mechanic, within a 24-month period must also pass a written test on the construction and maintenance of aircraft and the federal regulations and provisions governing mechanics as well as an oral and a practical skills test. 14 C.F.R. §§ 65.71, 65.75, 65.77, 65.79. (A-p. 8, A-p. 9, A-p. 10, A-p. 11.) Moreover, only mechanics who have been so certified by the FAA are permitted to perform the work that is the subject of the instant cases, and FAA-certified mechanics are part of a very limited class of persons to whom the FAA

[9] There is no merit to American's assertion in the 11th Circuit that the "professional services" exception could not apply here because plaintiffs did not use the term "professional" in their complaints. *See* 11th Cir. Reply Brief at pp. 11-12. Likewise, American's additional argument in the 11th Circuit that Plaintiffs' actions are alternatively barred by the two-year statute of limitations for professional malpractice claims is specious. *See* 11th Cir. Reply Brief at pp. 13-14.

Administrator's authority to approve a part for return to service following repairs (like the landing gear here) has been delegated. 14 C.F.R. § 43.7. (A-p. 4.)

The district court's suggestion, by its reliance on *Lochrane Engineering, Inc. v. Willingham Realgrowth Investment Fund, Ltd.*, 552 So. 2d 228, 232 (Fla. 5th DCA 1989), that American's mechanics simply provided "manual services," (R_p-1-7-p. 5; R_i-1-8-p. 5), flies in the face of these obvious skill and proficiency levels that an FAA-certified mechanic is required to possess. For purposes of the economic loss rule, these FAA-certified mechanics should be deemed "professionals."

Plaintiffs accordingly request that this Court conclude that the "professional services" exception to the economic loss rule applies to the instant case, and the Certified Question IV be answered in the affirmative.

C. The "Negligent Misrepresentation" Exception Applies Here Because American, as an FAA-Certified Class 3 Repair Station, Is In the Business of Supplying Information As Recognized in Section 552 of the Restatement (Second) of Torts. (Certified Question V).

The negligent misrepresentation action permitted in Section 552 of the Restatement (Second) of Torts is yet another exception to the economic loss rule that applies here. (R_p-1-7-pp. 7-8; R_i-1-8-pp. 7-8.) Section 552 establishes liability in tort for negligent misrepresentation to third parties in the absence of privity for economic losses under the following circumstances:

> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, *supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information*, if he fails to exercise reasonable care or competence in obtaining or communicating this information.
>
> (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered
>
> (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and
>
> (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction.
>
> (3) The liability of one who is under a public duty to give the information extends to loss suffered by any of the class of persons for whose benefit the duty is created, in any of the transactions in which it is intended to protect them.

Restatement (Second) of Torts § 552 (1977) (emphasis added); *see First Fla. Bank, N.A. v. Max Mitchell & Co.*, 558 So. 2d 9 (Fla. 1990) (adopting Section 552 in Florida).

Applying these standards to the instant case, the Plaintiffs have alleged that they commercially relied, to their detriment, on logbook entries prepared by American which falsely represented that the Aircraft was structurally sound and could be returned to service. As a FAA-certified repair station, American's business operations were governed by a regulatory scheme that unquestionably

demonstrates that Plaintiffs' reliance on the maintenance information supplied by American was both foreseeable and justified. Had American failed to file these maintenance records, the applicable federal aviation regulations would have rendered the Aircraft inoperable. 14 C.F.R. § 91.407(a)(2). (A-p. 12.)

It defies common sense and the federal aviation regulations to argue, as American does, that the only purpose of the logbook entries is to comply with the federal aviation regulations and not to benefit subsequent owners of the Aircraft. Indeed, the federal aviation regulations expressly require that the inspection and maintenance records "be retained and transferred with the aircraft at the time the aircraft is sold." 14 C.F.R. § 91.417(b)(2). (A-pp. 13-14.) The obvious purpose for the requirement is to accurately advise the new owner of the maintenance and inspections that have been performed on the aircraft. Thus, Profile is clearly one "of the class of persons for whose benefit the duty [to make the logbook entries] is created," and therefore under the express language of Section 552(3) of the Restatement (Second) of Torts, American is liable for the "loss suffered" by Profile and Indemnity as a result of American's false certification that the Aircraft's landing gear was properly maintained and inspected in accordance with federal aviation regulations.

In rejecting Plaintiffs' negligent misrepresentation claim, the district court relied on *Palau International Traders, Inc. v. Narcam Aircraft, Inc.*, 653 So. 2d

412 (Fla. 3d DCA 1995) (R_p-1-7-p. 8; R_i-1-8-p. 8), a 1995 Florida appellate court decision holding that the economic loss rule barred an action by the subsequent purchaser of an aircraft against an airplane mechanic for a negligent inspection which caused the purchaser to incur repair expenses on the aircraft. Relying on *Casa Clara* and Florida appellate court cases that had applied the economic loss rule to the rendition of services, the *Palau* court held that the economic loss rule barred the purchaser's action. *Palau*, 653 So. 2d at 415-18.

Palau was decided on the basis of cases that no longer reflect the current Florida law that the economic loss rule is generally "limit[ed to] actions in the product liability context." *Moransais*, 744 So. 2d at 983, and does not apply to causes of action between non-contracting parties arising out of the negligent rendition of services (*McLeod, Williams, Southland,* and *TransPetrol*). Furthermore in *Palau*, there was no claim that "other property" was damaged; plaintiff was suing for *inter alia* the cost of repairs that should have been made by the defendant repair facility. 653 So. 2d at 416-17.

Lastly the *Palau* court's conclusion that a FAA-certified repair station is solely "in the business of servicing airplanes . . . not in the in the business of supplying information," 653 So. 2d at 418, simply ignores the applicable FAA regulatory scheme whereby said repair stations, like American here, regularly supply information in an aircraft's logbook concerning the condition of the aircraft's

landing gear and other vital equipment that is reasonably relied on by aircraft owners, such as Profile.[10]

Nor does Plaintiffs' inability in good faith to amend their breach of warranty counts to allege an intended third-party beneficiary theory have any bearing on whether Plaintiffs can sue for negligent misrepresentation in light of Section 552. The point of Section 552 is that the class of persons for whose benefit the information is supplied is broader than the initial person to whom the information is knowingly given. *See Southland*, 624 So. 2d at 8 (recognizing that the negligent rendition of services can give rise to a tort action by a foreseeable party with whom

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[10] The district court's further observation, that Plaintiffs' complaints did not provide sufficient facts on how the information supplied by American was relied upon and caused the loss (R_p-1-7-p. 8; R_i-1-8-p. 8), was unfounded under federal notice pleading requirements, *In re Southeast Banking Corp.*, 69 F.3d 1539, 1551 (11th Cir. 1995), and not a basis to dismiss Plaintiffs' negligent misrepresentation claims with prejudice in any event, *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991) ("Where it appears a more carefully drafted complaint might state a claim upon which relief can be granted," the appropriate remedy is not to dismiss the claim with prejudice but rather to grant leave to amend), *overruled by Wagner v. Daewoo Heavy Indus. Am. Corp.*, No. 01-119988, 2002 WL 31749391, at *1-4 (11th Cir. Dec. 10, 2002) (stating, however, that new rule would apply "only to cases in which the notice of appeal was filed after the date of this decision"). The district court's additional observation in the order dismissing Indemnity's claim that Indemnity had not alleged how it relied on any information from American in issuing insurance to Profile (R_i-1-8-p. 8) is equally off-the-mark. Indemnity is suing as subrogee (R_i-1-1-p. 4) of Profile and thereby stands in the shoes of Profile. *Evanston Ins. Co. v. Stonewall Surplus Lines Ins. Co.*, 111 F.3d 852, 859 (11th Cir. 1997) (excess insurer as subrogee of the insured "stands in its shoes"). Accordingly, Indemnity had no obligation to plead its own separate reliance.

the tortfeasor had no contract and who was not a contract beneficiary). Thus, American's reliance, in the 11th Circuit, on *Florida Building Inspection Services, Inc. v. Arnold Corp.*, 660 So. 2d 730 (Fla. 3d DCA 1995) is misplaced. In that case, there was simply no indication that an inspection report prepared for a lessee/seller was the "type of document heavily relied upon by third party sublessees/buyers in the financial world." *Arnold*, 660 So. 2d at 733. In the instant action, however, Plaintiffs have alleged such reliance and the federal aviation regulations make clear that an aircraft logbook entry is a document upon which aircraft owners can reasonably rely for accurate information about an aircraft's maintenance.[11] This "heavy" reliance by commercial purchasers of aircraft is obvious in light of federal aviation regulations that prohibit an owner from operating its aircraft if, following maintenance, the requisite logbook entry is not prepared by an FAA-certified repair station. The Plaintiffs accordingly request that this Court confirm that the "negligent misrepresentation" exception to the economic loss rule is implicated by the facts of this case, and answer Certified Question V in the affirmative.

[11] Furthermore, *Arnold* was decided before *Moransais* and *Comptech* made clear that the economic loss rule is limited to product liability-type cases and does not apply to an action between non-contracting parties arising out of the negligent rendition of services.

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that this Honorable Court answer the five questions of law certified by the 11th Circuit as follows:

I. Florida's economic loss doctrine does not apply to the negligent rendition of maintenance services to an aircraft.

II. Florida's economic loss doctrine does not limit tort recovery where there is no contractual privity between the tortfeasor and victim and, as here, suit is based on the negligent rendition of maintenance services.

III. In addition, the economic loss rule cannot apply to this case because American's negligent reinstallation of the Aircraft's landing gear caused damage to "other property", *i.e.*, parts of the aircraft other than the landing gear.

IV. In addition, the economic loss rule cannot apply to this case because American negligently performed "professional services" -- namely, FAA-certified mechanical inspection and maintenance procedures involving a high degree of expertise and training mandated by federal law.

V. In addition, the economic loss rule cannot apply to this case because the false entries made by American in the Aircraft's federally-mandated maintenance log was a negligent misrepresentation on which Profile relied to its detriment.

Respectfully submitted,

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA and PROFILE AVIATION SERVICES, INC.

_____

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September 24, 2003

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two (2) true and correct copies of the foregoing Movants' Initial Brief on Questions Certified by the Eleventh Circuit have been furnished by Federal Express, post prepaid to: _____ on this ____ day of September, 2003.

_____

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CERTIFICATE OF COMPLIANCE

This brief is submitted under Rule 9.210 of the Florida Rules of Appellate Procedure and the undersigned hereby certifies that the brief complies with the font and other requirements set forth in Rule 9.210(a).

_____

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APPENDIX

CODE OF FEDERAL REGULATIONS
TITLE 14--AERONAUTICS AND SPACE
CHAPTER I--FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION
SUBCHAPTER C--AIRCRAFT
PART 43--MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION
Current through December 19, 2002; 67 FR 77697

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

(a) Except as provided in this section and § 43.17, no person may maintain, rebuild, alter, or perform preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part to which this part applies. Those items, the performance of which is a major alteration, a major repair, or preventive maintenance, are listed in Appendix A.

(b) The holder of a mechanic certificate may perform maintenance, preventive maintenance, and alterations as provided in Part 65 of this chapter.

(c) The holder of a repairman certificate may perform maintenance and preventive maintenance as provided in Part 65 of this chapter.

(d) A person working under the supervision of a holder of a mechanic or repairman certificate may perform the maintenance, preventive maintenance, and alterations that his supervisor is authorized to perform, if the supervisor personally observes the work being done to the extent necessary to ensure that it is being done properly and if the supervisor is readily available, in person, for consultation. However, this paragraph does not authorize the performance of any inspection required by Part 91 or Part 125 of this chapter or any inspection performed after a major repair or alteration.

(e) The holder of a repair station certificate may perform maintenance, preventive maintenance, and alterations as provided in Part 145 of this chapter.

(f) The holder of an air carrier operating certificate or an operating certificate issued under Part 121 or 135, may perform maintenance, preventive maintenance, and alterations as provided in Part 121 or 135.

(g) The holder of a pilot certificate issued under Part 61 may perform preventive maintenance on any aircraft owned or operated by that pilot which is not used under Part 121, 129, or 135.

(h) Notwithstanding the provisions of paragraph (g) of this section, the Administrator may approve a certificate holder under Part 135 of this chapter, operating rotorcraft in a remote area, to allow a pilot to perform specific preventive maintenance items provided--

(1) The items of preventive maintenance are a result of a known or suspected mechanical difficulty or malfunction that occurred en route to or in a remote area;

(2) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder for each item of preventive maintenance that the pilot is authorized to perform;

(3) There is no certificated mechanic available to perform preventive maintenance;

(4) The certificate holder has procedures to evaluate the accomplishment of a preventive maintenance item that requires a decision concerning the airworthiness of the rotorcraft; and

(5) The items of preventive maintenance authorized by this section are those listed in paragraph (c) of Appendix A of

this part.

(i) Notwithstanding the provisions of paragraph (g) of this section, in accordance with an approval issued to the holder of a certificate issued under part 135 of this chapter, a pilot of an aircraft type-certificated for 9 or fewer passenger seats, excluding any pilot seat, may perform the removal and reinstallation of approved aircraft cabin seats, approved cabin-mounted stretchers, and when no tools are required, approved cabin-mounted medical oxygen bottles, provided--

(1) The pilot has satisfactorily completed an approved training program and is authorized in writing by the certificate holder to perform each task; and

(2) The certificate holder has written procedures available to the pilot to evaluate the accomplishment of the task.

(j) A manufacturer may--

(1) Rebuild or alter any aircraft, aircraft engine, propeller, or appliance manufactured by him under a type or production certificate;

(2) Rebuild or alter any appliance or part of aircraft, aircraft engines, propellers, or appliances manufactured by him under a Technical Standard Order Authorization, an FAA-Parts Manufacturer Approval, or Product and Process Specification issued by the Administrator; and

(3) Perform any inspection required by Part 91 or Part 125 of this chapter on aircraft it manufacturers, while currently operating under a production certificate or under a currently approved production inspection system for such aircraft.

[Doc. No. 1993, 29 FR 5451, April 23, 1964, as amended by Amdt. 43-4, 31 FR 5249, April 1, 1966; Amdt. No. 43-12, 34 FR 14424, Sept. 16, 1969; Amdt. 43-23, 47 FR 41084, Sept. 16, 1982; Amdt. 43-25, 51 FR 40702, Nov. 7, 1986; Amdt. 43-36, 61 FR 19501, May 1, 1996; Amdt. 43-37, 66 FR 21066, April 27, 2001]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 43.3

14 CFR § 43.3

END OF DOCUMENT

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Current through December 19, 2002; 67 FR 77697

§ 43.5 Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration.

No person may approve for return to service any aircraft, airframe, aircraft engine, propeller, or appliance, that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless--

(a) The maintenance record entry required by § 43.9 or § 43.11, as appropriate, has been made;

(b) The repair or alteration form authorized by or furnished by the Administrator has been executed in a manner prescribed by the Administrator; and

(c) If a repair or an alteration results in any change in the aircraft operating limitations or flight data contained in the approved aircraft flight manual, those operating limitations or flight data are appropriately revised and set forth as prescribed in § 91.9 of this chapter.

[Docket No. 1993, 29 FR 5451, Apr. 23, 1964, as amended by Amdt. 43-23, 47 FR 41084, Sept. 16, 1982; Amdt. 43-31, 54 FR 34330, Aug. 18, 1989]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 43.5

14 CFR § 43.5

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Current through December 19, 2002; 67 FR 77697

§ 43.7 Persons authorized to approve aircraft, airframes, aircraft engines, propellers, appliances, or component parts for return to service after maintenance, preventive maintenance, rebuilding, or alteration.

(a) Except as provided in this section and § 43.17, no person, other than the Administrator, may approve an aircraft, airframe, aircraft engine, propeller, appliance, or component part for return to service after it has undergone maintenance, preventive maintenance, rebuilding, or alteration.

(b) The holder of a mechanic certificate or an inspection authorization may approve an aircraft, airframe, aircraft engine, propeller, appliance, or component part for return to service as provided in Part 65 of this chapter.

(c) The holder of a repair station certificate may approve an aircraft, airframe, aircraft engine, propeller, appliance, or component part for return to service as provided in Part 145 of this chapter.

(d) A manufacturer may approve for return to service any aircraft, airframe, aircraft engine, propeller, appliance, or component part which that manufacturer has worked on under § 43.3(j). However, except for minor alterations, the work must have been done in accordance with technical data approved by the Administrator.

(e) The holder of an air carrier operating certificate or an operating certificate issued under Part 121 or 135, may approve an aircraft, airframe, aircraft engine, propeller, appliance, or component part for return to service as provided in Part 121 or 135 of this chapter, as applicable.

(f) A person holding at least a private pilot certificate may approve an aircraft for return to service after performing preventive maintenance under the provisions of § 43.3(g).

[Docket No. 1993, 29 FR 5451, April 23, 1964, as amended by Amdt. 43-12, 34 FR 14424, Sept. 16, 1969; Amdt. 43-23, 47 FR 41084, Sept. 16, 1982; Amdt. 43-36, 61 FR 19501, May 1, 1996; Amdt. 43-37, 66 FR 21066, April 27, 2001]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 43.7

14 CFR § 43.7

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Current through December 19, 2002; 67 FR 77697

§ 43.9 Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records (except inspections performed in accordance with Part 91, Part 123, Part 125, § 135.411(a)(1), and § 135.419 of this chapter).

(a) Maintenance record entries. Except as provided in paragraphs (b) and (c) of this section, each person who maintains, performs preventive maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part shall make an entry in the maintenance record of that equipment containing the following information:

(1) A description (or reference to data acceptable to the Administrator) of work performed.

(2) The date of completion of the work performed.

(3) The name of the person performing the work if other than the person specified in paragraph (a)(4) of this section.

(4) If the work performed on the aircraft, airframe, aircraft engine, propeller, appliance, or component part has been performed satisfactorily, the signature, certificate number, and kind of certificate held by the person approving the work. The signature constitutes the approval for return to service only for the work performed.

In addition to the entry required by this paragraph, major repairs and major alterations shall be entered on a form, and the form disposed of, in the manner prescribed in Appendix B, by the person performing the work.

(b) Each holder of an air carrier operating certificate or an operating certificate issued under Part 121 or 135, that is required by its approved operations specifications to provide for a continuous airworthiness maintenance program, shall make a record of the maintenance, preventive maintenance, rebuilding, and alteration, on aircraft, airframes, aircraft engines, propellers, appliances, or component parts which it operates in accordance with the applicable provisions of Part 121 or 135 of this chapter, as appropriate.

(c) This section does not apply to persons performing inspections in accordance with Part 91, 123, 125, § 135.411(a)(1), or § 135.419 of this chapter.

(Approved by the Office of Management and Budget under OMB control number 2120-0020)

[Doc. No. 1993, 29 FR 5451, April 23, 1964, as amended by Amdt. 43-1, 30 FR 3638, March 19, 1965; Amdt. 43-11, 34 FR 14426, Sept. 16, 1969; Amdt. 43-15, 37 FR 14767, July 25, 1972; Amdt. 43-16, 37 FR 15983, Aug. 9, 1972; Amdt. 43-23, 47 FR 41085, Sept. 16, 1982; Amdt. 43-37, 66 FR 21066, April 27, 2001]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 43.9

14 CFR § 43.9

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Current through December 19, 2002; 67 FR 77697

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

(c) Special provisions for holders of air carrier operating certificates and operating certificates issued under the provisions of Part 121 or 135 and Part 129 operators holding operations specifications. Unless otherwise notified by the administrator, the methods, techniques, and practices contained in the maintenance manual or the maintenance part of the manual of the holder of an air carrier operating certificate or an operating certificate under Part 121 or 135 and Part 129 operators holding operations specifications (that is required by its operating specifications to provide a continuous airworthiness maintenance and inspection program) constitute acceptable means of compliance with this section.

[Doc. No. 1993, 29 FR 5451, April 23, 1964, as amended by Amdt. 43-15, 37 FR 14767, July 25, 1972; Amdt. 43-20, 45 FR 60183, Sept. 11, 1980; Amdt. 43-23, 47 FR 41085, Sept. 16, 1982; Amdt. 43-28, 52 FR 20028, May 28, 1987; Amdt. 43-37, 66 FR 21066, April 27, 2001]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 43.13

14 CFR § 43.13

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PART 65--CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS
SUBPART D--MECHANICS
Current through December 19, 2002; 67 FR 77697

§ 65.71 Eligibility requirements: General.

(a) To be eligible for a mechanic certificate and associated ratings, a person must--

(1) Be at least 18 years of age;

(2) Be able to read, write, speak, and understand the English language, or in the case of an applicant who does not meet this requirement and who is employed outside of the United States by a U.S. air carrier, have his certificate endorsed "Valid only outside the United States";

(3) Have passed all of the prescribed tests within a period of 24 months; and

(4) Comply with the sections of this subpart that apply to the rating he seeks.

(b) A certificated mechanic who applies for an additional rating must meet the requirements of § 65.77 and, within a period of 24 months, pass the tests prescribed by § § 65.75 and 65.79 for the additional rating sought.

[Doc. No. 1179, 27 FR 7973, Aug. 10, 1962, as amended by Amdt. 65-6, 31 FR 5950, Apr. 19, 1966]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 65.71

14 CFR § 65.71

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Current through December 19, 2002; 67 FR 77697

§ 65.75 Knowledge requirements.

(a) Each applicant for a mechanic certificate or rating must, after meeting the applicable experience requirements of § 65.77, pass a written test covering the construction and maintenance of aircraft appropriate to the rating he seeks, the regulations in this subpart, and the applicable provisions of Parts 43 and 91 of this chapter. The basic principles covering the installation and maintenance of propellers are included in the powerplant test.

(b) The applicant must pass each section of the test before applying for the oral and practical tests prescribed by § 65.79. A report of the written test is sent to the applicant.

[Docket No. 1179, 27 FR 7973, Aug. 10, 1962, as amended by Amdt. 65-1, 27 FR 10410, Oct. 25, 1962; Amdt. 65-6, 31 FR 5950, Apr. 19, 1966]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 65.75

14 CFR § 65.75

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SUBPART D--MECHANICS
Current through December 19, 2002; 67 FR 77697

§ 65.77 Experience requirements.

Each applicant for a mechanic certificate or rating must present either an appropriate graduation certificate or certificate of completion from a certificated aviation maintenance technician school or documentary evidence, satisfactory to the Administrator, of--

(a) At least 18 months of practical experience with the procedures, practices, materials, tools, machine tools, and equipment generally used in constructing, maintaining, or altering airframes, or powerplants appropriate to the rating sought; or

(b) At least 30 months of practical experience concurrently performing the duties appropriate to both the airframe and powerplant ratings.

[Doc. No. 1179, 27 FR 7973, Aug. 10, 1962, as amended by Amdt. 65-14, 35 FR 5533, Apr. 3, 1970]

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 65.77

14 CFR § 65.77

END OF DOCUMENT

§ 65.79 Skill requirements.

Each applicant for a mechanic certificate or rating must pass an oral and a practical test on the rating he seeks. The tests cover the applicant's basic skill in performing practical projects on the subjects covered by the written test for that rating. An applicant for a powerplant rating must show his ability to make satisfactory minor repairs to, and minor alterations of, propellers.

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 65.79

14 CFR § 65.79

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SUB CHAPTER F--AIR TRAFFIC AND GENERAL OPERATING RULES
PART 91--GENERAL OPERATING AND FLIGHT RULES
SUBPART E--MAINTENANCE, PREVENTIVE MAINTENANCE, AND ALTERATIONS
Current through August 22, 2003; 68 FR 50955

§ 91.407 Operation after maintenance, preventive maintenance, rebuilding, or alteration.

(a) No person may operate any aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless--

(1) It has been approved for return to service by a person authorized under § 43.7 of this chapter; and

(2) The maintenance record entry required by § 43.9 or § 43.11, as applicable, of this chapter has been made.

(b) No person may carry any person (other than crewmembers) in an aircraft that has been maintained, rebuilt, or altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the maintenance performed or alteration made, and logs the flight in the aircraft records.

(c) The aircraft does not have to be flown as required by paragraph (b) of this section if, prior to flight, ground tests, inspection, or both show conclusively that the maintenance, preventive maintenance, rebuilding, or alteration has not appreciably changed the flight characteristics or substantially affected the flight operation of the aircraft.

(Approved by the Office of Management and Budget under control number 2120- 0005)

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 91.407

14 CFR § 91.407

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PART 91--GENERAL OPERATING AND FLIGHT RULES
SUBPART E--MAINTENANCE, PREVENTIVE MAINTENANCE, AND ALTERATIONS
Current through September 1, 2003; 68 FR 52075

§ 91.417 Maintenance records.

(a) Except for work performed in accordance with § § 91.411 and 91.413, each registered owner or operator shall keep the following records for the periods specified in paragraph (b) of this section:

(1) Records of the maintenance, preventive maintenance, and alteration and records of the 100-hour, annual, progressive, and other required or approved inspections, as appropriate, for each aircraft (including the airframe) and each engine, propeller, rotor, and appliance of an aircraft. The records must include--

(i) A description (or reference to data acceptable to the Administrator) of the work performed; and

(ii) The date of completion of the work performed; and

(iii) The signature, and certificate number of the person approving the aircraft for return to service.

(2) Records containing the following information:

(i) The total time in service of the airframe, each engine, each propeller, and each rotor.

(ii) The current status of life-limited parts of each airframe, engine, propeller, rotor, and appliance.

(iii) The time since last overhaul of all items installed on the aircraft which are required to be overhauled on a specified time basis.

(iv) The current inspection status of the aircraft, including the time since the last inspection required by the inspection program under which the aircraft and its appliances are maintained.

(v) The current status of applicable airworthiness directives (AD) including, for each, the method of compliance, the AD number, and revision date. If the AD involves recurring action, the time and date when the next action is required.

(vi) Copies of the forms prescribed by § 43.9(a) of this chapter for each major alteration to the airframe and currently installed engines, rotors, propellers, and appliances.

(b) The owner or operator shall retain the following records for the periods prescribed:

(1) The records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for 1 year after the work is performed.

(2) The records specified in paragraph (a)(2) of this section shall be retained and transferred with the aircraft at the time the aircraft is sold.

(3) A list of defects furnished to a registered owner or operator under § 43.11 of this chapter shall be retained until the defects are repaired and the aircraft is approved for return to service.

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to part 43 of this chapter, a copy of FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

(Approved by the Office of Management and Budget under control number 2120- 0005)

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 91.417

14 CFR § 91.417

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§ 145.59 Ratings.

The following ratings are issued under this subpart:

(a) Airframe ratings.

(1) Class 1: Composite construction of small aircraft.

(2) Class 2: Composite construction of large aircraft.

(3) Class 3: All-metal construction of small aircraft.

(4) Class 4: All-metal construction of large aircraft.

(b) Powerplant ratings.

(1) Class 1: Reciprocating engines of 400 horsepower or less.

(2) Class 2: Reciprocating engines of more than 400 horsepower.

(3) Class 3: Turbine engines.

(c) Propeller ratings.

(1) Class 1: Fixed-pitch and ground-adjustable propellers of wood, metal, or composite construction.

(2) Class 2: Other propellers, by make.

(d) Radio ratings.

(1) Class 1: Communication equipment. Radio transmitting and/or receiving equipment used in an aircraft to send or receive communications in flight, regardless of carrier frequency or type of modulation used. This equipment includes auxiliary and related aircraft interphone systems, amplifier systems, electrical or electronic intercrew signaling devices, and similar equipment. This equipment does not include equipment used for navigating or aiding navigation of aircraft, equipment used for measuring altitude or terrain clearance, other measuring equipment operated on radio or radar principles, or mechanical, electrical, gyroscopic, or electronic instruments that are a part of communications radio equipment.

(2) Class 2: Navigational equipment. A radio system used in an aircraft for en route or approach navigation. This does not include equipment operated on radar or pulsed radio frequency principles, or equipment used for measuring altitude or terrain clearance.

(3) Class 3: Radar equipment. An aircraft electronic system operated on radar or pulsed radio frequency principles.

(e) Instrument ratings.

(1) Class 1: Mechanical. A diaphragm, bourdon tube, aneroid, optical, or mechanically driven centrifugal instrument used on aircraft or to operate aircraft, including tachometers, airspeed indicators, pressure gauges drift sights, magnetic compasses, altimeters, or similar mechanical instruments.

(2) Class 2: Electrical. Self-synchronous and electrical-indicating instruments and systems, including remote indicating instruments, cylinder head temperature gauges, or similar electrical instruments.

(3) Class 3: Gyroscopic. An instrument or system using gyroscopic principles and motivated by air pressure or electrical energy, including automatic pilot control units, turn and bank indicators, directional gyros, and their parts, and flux gate and gyrosyn compasses.

(4) Class 4: Electronic. An instrument whose operation depends on electron tubes, transistors, or similar devices, including capacitance type quantity gauges, system amplifiers, and engine analyzers.

(f) Accessory ratings.

(1) Class 1: A mechanical accessory that depends on friction, hydraulics, mechanical linkage, or pneumatic pressure for operation, including aircraft wheel brakes, mechanically driven pumps, carburetors, aircraft wheel assemblies, shock absorber struts and hydraulic servo units.

(2) Class 2: An electrical accessory that depends on electrical energy for its operation, and a generator, including starters, voltage regulators, electric motors, electrically driven fuel pumps magnetos, or similar electrical accessories.

(3) Class 3: An electronic accessory that depends on the use of an electron tube transistor, or similar device, including supercharger, temperature, air conditioning controls, or similar electronic controls.

<<PART 145--REPAIR STATIONS>>

<Text of part effective April 6, 2003.>

<General Materials (GM) - References, Annotations, or Tables>

14 C. F. R. § 145.59

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