



Aviation Law and Tragedy

BY JACK HARRINGTON AND ALAN L. FARKAS

On September 24, 1998, judgment was entered in favor of Rotary Air Force Marketing, Inc. (RAF), in what appears to be one of the first product liability cases against an aircraft kit manufacturer to reach a jury. Although this is a victory for the entire experimental aircraft community, we must be mindful of the tragedy behind this lawsuit. Indeed, this case holds many lessons for the would-be builder/owner of an amateur built experimental aircraft.



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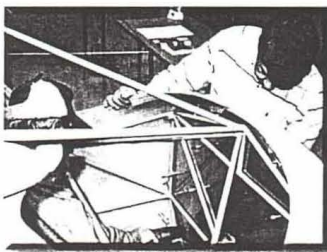
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On November 2, 1996, the pilot of an RAF gyroplane, which he had built from a kit, perished while flying the gyroplane. He had received only minimal dual instruction, and he had not obtained a solo flight endorsement. The gyroplane was not properly balanced or trimmed for one occupant (it was set up for instruction). The take-off was normal, but within a few minutes eyewitnesses observed the gyroplane repeatedly pitch nose-up to nose-down. After three to four successions of this porpoising motion, the rotor blades struck the frame and rudder. The gyroplane, and a variety of splintered parts, plummeted to earth. The pilot died on impact.

The crash scenario portrays a textbook example of pilot induced oscillation (PIO), a condition which is commonly recognized as a potentially fatal hazard to novice rotorcraft pilots. All rotorcraft are susceptible to PIO, and PIO can be controlled with proper flight instruction. Nonetheless, the pilot's estate alleged in its lawsuit that RAF negligently designed the gyroplane kit.

Anybody can be sued in this country. It is expensive to prove that you have done nothing wrong, and many

choose to settled rather than incur the costs related to bringing a case to trial. RAF had the conviction, stamina, and integrity to stand by their fine product through two years of trial. In pre-trial motions the Judge determined that the pilot was the true manufacturer of his gyroplane, and RAF could not be held liable for any manufacturing defects. The case went to trial on the claims that the kit design was defective and that RAF did not provide adequate warnings to the pilot. After nearly two weeks of detailed testimony and evidence, the Jury unanimously held that these claims were false, and that the pilot was responsible for his own death. One juror commented after trial that he might be interested in buying an RAF kit.

While it would be convenient to dismiss the pilot as irresponsible, the simple truth is that we can understand why he chose to attempt an unauthorized solo flight. He built the gyroplane himself, in his own garage, with his own tools. He knew that gyroplane inside and out. He had previously owned an ultralight category gyroplane, and he was proficient enough in the operation of his ultralight gyroplane to have walked away from an engine out landing without a scratch. The pilot read several magazines related to gyroplane hazards and operations. He went to meetings and conferences and became acquainted with other gyroplane pilots. Also, he knew that his gyroplane was working properly. The FAA had inspected and certified the gyroplane. His instructors performed test flights. The pilot had taxied the gyroplane while he was building it. Finally, although it was illegal, the pilot had briefly flown it by himself on one prior occasion.

At trial, the Plaintiff's attorney used all of this information in an attempt to convince the jury that the design of the gyroplane had to be defective. After all, the attorney argued, how else can we explain how such a knowledgeable and skilled pilot could die in an aircraft accident. Herein lies the lesson for all of us. First, anything that flies is capable of killing its occupants. Homebuilt aircraft are not toys. Like any aircraft, they are complex, sophisticated, and potentially dangerous machines, and they should

be treated as such. The process of building an aircraft is incredibly rewarding. However, the intimate knowledge gained regarding the mechanics of the aircraft are no substitute for piloting skills. Similarly, the fact that many of these aircraft are built as backyard projects may add to the misconception that these machines are less complex, and somehow easier to operate than factory built machines.

Finally, the pilot learned the hard way that experience in a similar aircraft design is no substitute for thorough flight instruction in the aircraft which you intend to operate. The Plaintiff's attorney argued that the pilot's piloting skills were proven when he successfully flew this gyroplane by himself on a prior occasion. Given the right conditions, an unskilled pilot may indeed be able to fly his aircraft without incident. However, only proper training will prepare that pilot for the variety of conditions to be encountered in an arena as big as the sky.

Clearly, this is a case which will help to ensure the longevity of the amateur built industry. This segment of the industry is a vibrant and valuable force of innovation to the entire aviation community. We hope RAF continues to prosper along with the other companies which are designing the aircraft that will fill our skies in the next century. However, the future of aviation demands not only that manufacturers and designers remain mindful of their responsibilities, but that pilots take responsibility for their actions as well.

(Alan L. Farkas is a trial attorney in the aviation department of Blatt, Hammesfahr and Eaton in Chicago, IL. He is currently a student pilot, and hopes to obtain his Private pilot certificate in the near future. Jack Harrington, EAA 266182, is a member of the same firm. He is a member of the EAA Legal Advisory Counsel and is the current president of the EAA Warbirds of America. Alan and Jack represented RAF at trial.) ♦

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