The Honorable David Whedbee
Hearing Date: November 7, 2025
With Oral Argument at 10:30 a.m.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

DONNA HILTY, as Personal Representative of the ESTATE OF LAUREN HILTY, and JOHN HILTY, individually; GREGG SWANSON, as Personal Representative of the ESTATE OF LUCA MICKEL; STAN HARRELSON, as Personal Representative of the ESTATE OF JOANNE MERA; MARCIE VON BECK, as Personal Representative of the ESTATE OF GABRIELLA HANNA, and DAVID VON BECK, individually; RICKY WILLIAMS, as Personal Representative for the ESTATE OF SANDRA WILLIAMS,

Plaintiffs,

v.

DE HAVILLAND AIRCRAFT OF CANADA, LIMITED, a foreign limited company; VIKING AIR LIMITED, a foreign limited company; LONGVIEW AVIATION CAPITAL CORPORATION, a foreign corporation; NORTHWEST SEAPLANES, INC., a Washington corporation DBA Friday Harbor Seaplanes and DBA Chelan Seaplanes; WEST ISLE AIR, INC., a Washington corporation, DBA Northwest Seaplanes, Inc., DBA Friday Harbor Seaplanes, and DBA Chelan Seaplanes,

Defendants.

No. 23-2-15840-7 SEA

OMNIBUS ORDER ON NWS'S SUCCESSIVE MOTIONS FOR SUMMARY JUDGMENT AGAINST VIKING AND VIKING'S MOTION FOR SUMMARY JUDGMENT AGAINST NWS

ORDER

THIS MATTER comes before the Honorable David Whedbee of King County Superior Court on Northwest Seaplanes and West Isle Air's (collectively, "NWS") motions for summary

judgment against Viking Air Limited ("Viking"), filed at Dkts. 421, 459 and 525, and Viking's lone motion for summary judgment against NWS, filed at Dkt. 428. Because there are many overlapping factual and legal issues among these motions, the Court issues the following omnibus order to address all pending matters.

The Court heard oral argument on these motions on November 7, 2025, and has reviewed and considered all pleadings and supporting materials filed by both parties. The Court finds and concludes as follows:

1. On September 4, 2022, a float-equipped de Havilland DHC-3 (Otter) model aircraft, *i.e.*, N725TH, owned by Defendant Northwest Seaplanes and operated by Defendant West Isle Air, Inc. (collectively NWS), was destroyed after it abruptly pitched down mid-flight, within seconds crashed into Puget Sound, and sank, killing the pilot and all nine passengers.
2. The Estates of the killed passengers sued NWS, but they also sued Viking as the current Type Certificate holder, seeking to hold it liable as the designer, manufacturer, and seller of the airplane. After litigation commenced, the plaintiffs settled all their claims by the time of these pending motions. What remains in the case are NWS's claims against Viking for negligence *per se*, product liability, breach of warranty, and punitive damages. At issue now under CR 56 is NWS's motion that Viking was negligent *per se*; NWS's motion that Viking certified the accident aircraft as airworthy despite an allegedly defective design that rendered the horizontal stabilizer trim actuator (HSTA) assembly not reasonably safe in violation of the Washington Products Liability Act (WPLA), RCW 7.72 *et seq*.; and Viking's competing motion to strike all NWS's claims and to find that NWS's acts and omissions, through its chief maintenance officer (Jim Lambert) who installed an allegedly unauthorized moisture seal into the HSTA, was the sole cause of the fatal crash.

3. On April 26, 1956, the United States Civil Aeronautics Board, the predecessor to the Federal Aviation Administration (FAA), first issued Aircraft Type Certificate Import Number 815 for the DHC-3 model aircraft ("CAB Import Type Certificate No. 815").

4. On June 15, 1967, the DHC-3 model aircraft involved in this accident, N725TH, was certified by de Havilland as having conformed in all respects to the Canadian Type Approval No. A27-5 and the FAA Type Certificate A-815. Both the Canadian Type Approval No. A27-5 and the Aircraft Specification No. A-815 for the FAA Aircraft Type Certificate Import Number 815 contain the same airworthiness standards pursuant to which de Havilland certified the construction of the accident aircraft complied with applicable regulations, *i.e.*, ICAO Annex 8, 2nd Edition (Transport Category D), and CAR 3 as amended to November 1, 1949.

5. In January 2006, after several predecessors held the Type Certificate, the FAA re-issued to Viking the Type Certificate for accident aircraft (the Havilland DHC-3 Otter). During that process, Viking recertified the DHC-Otter under the CAB Import Type Certificate No. 815, which states as follows:

> This certificate issued to Viking Air Limited certifies that the type design for the following product with the operating limitations and conditions therefore as specified in the Federal Aviation Regulations and the Type Certificate Data Sheet meets the airworthiness requirements of Part 3 of the Civil Air/Federal Aviation Regulations [CAR].
>
> Airplane Models: DHC-3 Otter
>
> This certificate and the Type Certificate Data Sheet which is a part hereof shall remain in effect until surrendered, suspended, revoked, or a termination date is otherwise established by the Administrator of the Federal Aviation Administration.

6. CAR Part 3, Section 3.328, provides as follows:

> Installation. Movable tail surfaces shall be so installed that there is no interference between the surfaces or their bracing when each is held in its extreme position and all others are operated through their full angular movement. When an adjustable stabilizer is used, stops shall be provided which, in the event of failure of the adjusting mechanism, will limit its travel to a range permitting safe flight and landing.

7. In 2014, the accident aircraft's owner prior to NWS, Hans Munich, imported the accident aircraft to the USA from Canada. At that time, and since then, the Type Certificate holder was and is Viking. Mr. Munich's Export Airworthiness Certificate was issued by Canada's Minister of Transport on February 26, 2014. Mr. Munich's FAA application for U.S. airworthiness featured a Standard Airworthiness Certificate that, under 49 U.S.C. § 44704 and the terms stated on the Standard Airworthiness Certificate, the accident aircraft was inspected and found to conform to the DHC-3 Type Certificate, be in a safe operating condition, and meet all requirements of the applicable "comprehensive and detailed" airworthiness code. On May 12, 2014, the FAA granted Mr. Munich's importation application.

8. In 2016, NWS began leasing the accident aircraft and purchased it in 2018. In addition to the FAA import inspection in 2014, NWS was required to work with the FAA through another conformity inspection process in 2016 to obtain FAA approval for NWS to add the accident aircraft to its fleet of passenger-carrying aircraft. This process was completed after 3-4 months.

9. Interlacing all the motions are several core disputes:

- NWS argues that the design by de Havilland of the HSTA assembly on the accident aircraft, and certified as FAA compliant by Viking as the current Type Certificate holder, was not reasonably safe because the HSTA failed to provide stops in violation of CAR Part 3, Section 3.328. A "stop" prevents the horizontal stabilizer from floating freely, and in case of mechanical failure allows the pilot to maintain control of the aircraft.

- Viking claims that on April 5, 2022, NWS's chief maintenance officer (Jim Lambert), or possibly his son who was not an FAA-approved mechanic, inserted a moisture seal purchased from an automotive shop, which was not authorized or approved by the FAA, into the HSTA without logging the part change or contacting the FAA. Relevant here, Viking argues this was a "major alteration" that could not be implemented without FAA approval and therefore rendered void the airworthiness under any previous Type Certification, *i.e.*, in 2006 and 2014.

- Both parties argue that the other party's acts and omissions were the respective sole cause of the accident.

***NWS's Motion on Negligence* Per Se**

10. NWS seeks a finding that Viking was negligent *per se* because the HSTA allegedly had no "stops" in violation of CAR Part 3.328.

11. The Court finds that CAR Part 3.328 does apply here, as NWS contends and contrary to Viking's countervailing interpretation. Nonetheless, NWS's claim of negligence *per se* is a non-starter.

12. This Court follows the persuasive authority in *Garcia v. Vitus Energy, LLC*, a case from the federal district of Alaska, that

> [c]ourts do not consistently apply the doctrine of negligence *per se* in the context of federal maritime law. While federal maritime law recognizes an analog of negligence *per se* in the Pennsylvania Rule, unlike negligence *per se* ... the Pennsylvania Rule creates a presumption of causation, not a presumption of negligence. In the absence of well-developed maritime law pertaining to Plaintiff's negligence *per se* claim, the Court will incorporate common law principles and Alaska state law.

605 F.Supp.3d 1188, 1204–05 (D. Alaska 2022) (internal footnotes, citations, and quotation marks omitted) (alteration in original); *see also Just v. Chambers*, 312 U.S. 383, 388 (1941) ("With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation.").

13. Under the Pennsylvania Rule, "where a vessel fails to comply with . . . a statutory duty, the burden on causation shifts to the violator to show not only that the violation might not have been one of the causes of the injury, but that it could not have been." *Crane v. State*, 103 Wn. App. 427, 431–32, 13 P.3d 642, 644 (2000) (citing *The Pennsylvania*, 86 U.S. 125, 136 (1873)) (but declining to extend rule to general health and safety regulations).

14. Here, where the commercial float-plane crash occurred in navigable waters, it is undisputed that general maritime law applies. It is also undisputed that FAA regulations,

including CAR Part 3.328 and the process for seeking approval for major alterations under 14 CFR § 21.113 at issue here, are aviation-specific regulations and not general health and safety regulations. *Cf. Crane*, 103 Wn. App. at 432. The Court therefore finds that the Pennsylvania Rule applies.

15. NWS's negligence claim may proceed under the Pennsylvania Rule. The alleged negligence *per se* claim is not actionable here. To this extent the Court **GRANTS** Viking's motion for summary judgment to strike this claim and **DENIES** NWS's motion on negligence *per se*. Any "Negligence Per Se" claim is **DISMISSED WITH PREJUDICE**.

16. Under the Pennsylvania Rule, the Court finds there are genuine issues of material fact that preclude summary judgment for both parties.

17. Viking claims that the moisture seal inserted into the HSTA in April 2022 by Mr. Lambert (or his son) was an unauthorized major alteration that rendered the accident aircraft unairworthy. NWS counters that the use of the moisture seal was a minor alteration Mr. Lambert could handle on his own as a "field decision."

18. In *G.S. Rasmussen & Associates, Inc. v. Kalitta Flying Services, Inc.*, the Ninth Circuit explained the applicable certification process, including that for alterations:

> [T]he FAA certifies airplane types rather than individual planes. Aircraft manufacturers are required to test and analyze new airplane designs themselves; the FAA then determines the airworthiness of the design based on the manufacturer-generated engineering data and test results. Once a manufacturer has demonstrated the safety of its design, the FAA issues it a Type Certificate. *See* 49 U.S.C.App. § 1423(a)(2); 14 CFR § 21.21(b). The manufacturer can then obtain a production certificate by proving to the FAA that each duplicate airplane will comply with the Type Certificate. *See* 49 U.S.C.App. § 1423(b); 14 CFR §§ 21.133–21.143. Finally, the manufacturer can obtain airworthiness certification for subsequent aircraft, without undergoing independent testing, by demonstrating that they conform to the Type Certificate. *See* 49 U.S.C.App. § 1423(c); 14 CFR § 21.183.
>
> [Under a closely related process, one can seek] Supplemental Type Certificates (STCs)—which, as the name implies, certify changes to planes already type-certificated. Anyone who wishes to make a major alteration to an airplane must obtain an STC. 14 CFR § 21.113. The STC serves the same function for alterations as the Type Certificate does for initial manufacture: It allows the FAA inspector to shortcut the airworthiness certification process by

> incorporating an approved design. STCs are obtained through the same arduous process as Type Certificates: The applicant must present engineering and test data sufficient to prove to the FAA the airworthiness of the proposed modification. *See* 14 CFR §§ 21.115–21.117.

958 F.2d 896, 899 (9th Cir. 1992) (footnote omitted).

19. A "major alteration" is one that "might appreciably affect weight, balance, structural strength, performance, powerplant operation, flight characteristics, or other qualities affecting airworthiness." 14 CFR § 1.1.

20. The HSTA was an aircraft "appliance" as defined by 14 CFR § 1.1, meaning an "instrument, mechanism, equipment, part, apparatus, appurtenance, or accessory" used in "operating or controlling an aircraft in flight" that is "installed in or attached to the aircraft, and is not part of an airframe, engine, or propeller."

21. NWS's installation of the unapproved seal into the HSTA was an unauthorized "appliance major alteration" as defined at the time by 14 CFR Part 43, App'x. A, subsection (1)(4), as an alteration "of the basic design not made in accordance with recommendations of the appliance manufacturer or in accordance with an FAA Airworthiness Directive are appliance major alterations."

22. The Court rejects NWS's claim that the insertion of the moisture seal was a "field approval decision" that Mr. Lambert was authorized to make. Only an FAA inspector may make a "field approval decision," once contacted by a mechanic such as Mr. Lambert.

23. In *Lawson v. Huerta*, the Sixth Circuit set forth the steps that must be followed under these circumstances:

> The FAA is a stickler for record keeping. Any time a mechanic works on an airplane or performs an annual inspection, FAA rules require him to make and certify accurate records of the work performed in the airplane's maintenance logbook. Whether the mechanic replaces an engine or simply tinkers with a gauge, the logbook must collect its due.
>
> Certain work will trigger additional requirements. When a mechanic makes a "Major Repair and Alteration," for instance, he must describe it on an

> FAA Form 337. And when the work is finished, he must provide copies of the completed form to the airplane's owner and the FAA. The logbook and the form give the plane's owners, the FAA, and future mechanics the information they need to keep the plane safe. *See* FAA Advisory Circular No. 43.9-1F.
>
> Sometimes a mechanic must ask the FAA to approve his Form 337 before he gets to work. This will depend on the availability of "approved data." Approved data includes all the schematics and instructions that the agency has already approved for use in the field. One source is the Supplemental Type Certificate ("STC"), which sets out pre-approved instructions for repairs or alterations. Whenever a mechanic follows those instructions, he can simply fill out a Form 337 and get on with it. But if he cannot find an STC instruction for his project, he must request a "field approval" before proceeding.
>
> To request a field approval, a mechanic must describe the alterations he intends to make on a Form 337, gather data showing that the alteration is safe, and then send the materials to an FAA field office. At the field office, an Aviation Safety Inspector reviews the materials. Once the inspector approves the request, the mechanic has the go-ahead.

No. 16-4332, 692 F. App'x 790, 791–92 (6th Cir. Feb. 16, 2017) (unpublished).

24. It is undisputed that Mr. Lambert did not contact the FAA field office for assistance or otherwise; he did not complete a Form 337 or an STC for the moisture seal, or submit any request for pre-approval from the FAA; and he did not document the insertion of the moisture seal (whether accurately or not). As a matter of law, Mr. Lambert (or his son) was not authorized on his own to make a "field" decision about any "minor alteration." This unauthorized major alteration rendered the accident aircraft unairworthy.

25. To this extent the Court **GRANTS** Viking's motion because, based on the undisputed facts, Mr. Lambert's (or his son's) acts and omissions violated the relevant FAA regulations discussed above.

26. Under the Pennsylvania Rule, NWS's regulatory violations give rise to the rebuttable presumption that it caused the crash here. However, NWS has met its production under CR 56 to rebut the presumption, through expert affidavits and otherwise, that such

regulatory violations could not have been the cause of the crash. For similar reasons, the Court rejects Viking's claim that, as a matter of law, the inserted moisture seal was a superseding cause. To this extent Viking's motion for summary judgment is **DENIED**.

27. With respect to NWS's case under the Pennsylvania Rule, there are genuine issues of material fact whether the HSTA here had "stops" giving rise to a regulatory violation under CAR Part 3.328. *See*, *e.g.*, Dkt. 461, Ex. I (Preshaw Dep. at 150-151). If supported by substantial evidence at trial, however, nothing in this order would preclude NWS from seeking a jury instruction that NWS is entitled to a presumption in its favor.

28. In either event, as Viking itself notes (*see*, *e,g*., Dkt. 462 at 13-14; Dkt. 540 at 12-13), there are genuine issues of material fact about whether sole cause can be attributed to either party. *See United States v. Reliable Transfer Co.*, 421 U.S. 397, 411 (1975) ("when two or more parties have contributed by their fault to cause property damage in a maritime collision . . . liability for such damage is to be allocated among the parties proportionately to the comparative degree of their fault"); *Alprin v. City of Tacoma*, 139 Wn. App. 166, 171, 159 P.3d 448, 451 (2007) ("plaintiff in an admiralty negligence cause of action need not prove that the injury was caused solely by defendant's breach, . . . only that defendant's breach caused some of the plaintiff's injury") (citing *Reliable Transfer*, 421 U.S. at 411).

29. As to damages, Viking argues that the economic loss rule bars any recovery under these circumstances. NWS argues the damages claimed here—for the loss of a turbine engine, engine accessories, propeller, battery, floats, landing gear, avionics, cabin items, instruments, *inter alia*—fall outside the economic loss doctrine, because they are "add-ons" to the product itself.

30. In *East River S.S. Corp. v. Transamerica Delaval, Inc.*, the U.S. Supreme Court held "a manufacturer in a commercial relationship has no duty under either a negligence or strict products-liability theory to prevent a product from injuring itself." 476 U.S. 858, 871 (1986); *see also Stanton v. Bayliner Marine Corp.*, 123 Wn.2d 64, 87-88, 866 P.2d 15,

28 (1993) ("*East River* is the maritime rule on economic loss. . . . [S]ubstantive admiralty law precludes recovery for economic loss[;] . . . [a] remedy, if any, for economic loss to the yachts may be pursued in warranty against the seller under the UCC (RCW 62A)."). "In the traditional 'property damage' cases, the defective product damages other property." *East River*, 476 U.S. at 867 (noting "[i]n this case, there was no damage to 'other' property").

31. In *Saratoga Fishing Company v. J.M. Martinac & Company*, decided after *East River* and *Stanton*, the U.S. Supreme Court recognized an exception to the economic loss rule allowing recovery for

> equipment added to a product after the Manufacturer (or distributor selling in the initial distribution chain) has sold the product to an Initial User is not part of the product that itself caused physical harm. Rather, in *East River*'s language, it is "other property." (We are speaking . . . of added equipment that itself played no causal role in the accident that caused the physical harm.)

520 U.S. 875, 884–85 (1997).

32. Here, NWS may recover damages for added equipment, such as for the loss of a turbine engine, engine accessories, propeller, battery, floats, landing gear, avionics, cabin items, instruments, *inter alia*. NWS may not recover damages "resulting [from] loss due to repair costs, decreased value, and lost profits [which] is essentially the failure of the purchaser to receive the benefit of its bargain—traditionally the core concern of contract law." *East River*, 476 U.S. at 870. And, as discussed below, NWS may not seek punitive damages.

***NWS's Products Liability Claim Under RCW 7.72* et seq.**

33. NWS argues that under the "risk-utility" test permitted in *Lecy v. Bayliner Marine Corp.*, 94 Wn. App. 949 (1999), for determining whether a product was not designed to be reasonably safe, De Havilland's failure to provide mandated stops rendered the design of the HSTA not reasonably safe as a matter of law under RCW 7.72.030(1), and that if present in the design the stops would have prevented the fatal crash. NWS also contends that the HSTA featured a "moisture seal cavity" into which Mr. Lambert

inserted the unauthorized moisture seal. As above, NWS argues this alteration was minor.

34. Although Viking contests the merits of NWS's products liability claim, Viking stresses as a threshold matter that this claim does not survive scrutiny under RCW 7.72.060, the WLPA's statute of repose. NWS does not challenge the applicability of the WLPA's statute of repose. In any event, the Court finds that the statute of repose does not conflict with "the characteristic features of the maritime law or [is] inconsistent with federal legislation." *Chambers*, 312 U.S. at 388; *see also See Becker v. Harken, Inc.*, No. 06-60255-CIV-COHN/S, 2007 U.S. Dist. LEXIS 9001, at *20-21 (S.D. Fla. Feb. 8, 2007) (unpublished).

35. Under RCW 7.72.060(1), "a product seller shall not be subject to liability to a claimant for harm under this chapter if the product seller proves by a preponderance of the evidence that the harm was caused after the product's 'useful safe life' had expired."

36. The WPLA's statute of repose provides further that "[i]f the harm was caused more than twelve years after the time of delivery, a presumption arises that the harm was caused after the useful safe life had expired. This presumption may only be rebutted by a preponderance of the evidence." RCW 7.72.060(2); *see also Zenaida-Garcia v. Recovery Sys. Tech., Inc*., 128 Wn. App. 256, 259, 115 P.3d 1017, 1019 (2005).

37. When challenging the presumptive 12-year useful safe life, a party must demonstrate with evidence that the product at issue in fact could be used safely beyond the 12-year statutory period. *See*, *e.g*., *Pardo v. Olson & Sons, Inc.*, 40 F.3d 1063, 1068 (9th Cir. 1994) (under RCW 7.72.060(2) expert affidavit that "useful safe life of the truck bed is at least 30 years" precluded summary judgment); *Morse v. City of Toppenish*, 46 Wn. App. 60, 66, 729 P.2d 638, 642-642 (1986) (Plaintiff "provided the affidavit of an expert . . . who indicated the useful safe life of a . . . diving board was in excess of 15 to 16 years of constant use," and the "injury occurred less than 14 years after delivery of the diving board.").

38. NWS does not dispute that 12 years have expired since the accident aircraft was manufactured or recertified by Viking, and thus that the HSTA at issue here is beyond its presumptive useful safe life.

39. Unlike in *Morse* and *Pardo*, NWS offers no evidence that the useful safe life of the HSTA is longer than 12 years. Therefore, NWS's claim under RCW 7.72 *et seq.* must fail for violating the statute of repose. To this extent, the Court **DENIES** NWS's motion for summary judgment on its products liability claim, and **GRANTS** Viking's motion for summary judgment to dismiss this claim. NWS's products liability claim under the WPLA is **DISMISSED WITH PREJUDICE**.

NWS's Breach of Warranty Claims

40. NWS alleges that Viking breached express and implied warranties by virtue of representations in the certification process that the HSTA complied with CAR Part 3.328, when in fact it didn't because the HSTA arguably featured no stops. Because of the FAA regulatory framework, NWS contends further, NWS was necessarily a third-party beneficiary. This claim has no merit.

41. "[W]here a commercial purchaser seeks to recover economic damages from a remote manufacturer, implied warranties do not arise absent privity or an underlying contract to which the remote commercial purchaser is a third-party beneficiary." *Tex Enters., Inc. v. Brockway Standard, Inc.*, 149 Wn.2d 204, 214, 66 P.3d 625, 630 (2003).

42. Here, NWS has not produced any underlying contract or demonstrated that it was in privity or an intended third-party beneficiary. Any claim for breach of implied warranty fails. That claim is **DISMISSED WITH PREJUDICE**.

43. As to NWS's claim that Viking breached express warranties, inherent in the FAA certification process, that claim must fail because, as discussed above, NWS (through the acts and omissions of Mr. Lambert) did not alter the HSTA in accordance with part 43, Appendix A, of the FAA regulations.

44. A claim for breach of warranty "must be commenced within four years after the cause of action has accrued." RCW 62A.2-725(1). "A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except where a warranty explicitly extends to future performance of the goods," in which case the discovery rule applies. RCW 62A.2-725(2); *see also Holbrook, Inc. v. Link-Belt Const. Equip. Co.*, 103 Wn. App. 279, 284, 12 P.3d 638, 641 (2000) ("[T]he four-year limitations period normally begins to run upon delivery of the goods. But if goods are sold with a warranty of future performance, the limitations period runs from the date on which the defect is or should have been discovered.").

45. Mr. Munich submitted his application for FAA certification in February 2014 (while Viking was the Type Certificate holder) and obtained certification on May 12, 2014. In pertinent part, that certification noted "[u]nless sooner surrendered, suspended, revoked, or a termination date is otherwise established by the FAA, this airworthiness certificate is effective as long as the maintenance, preventative maintenance and alterations are performed in accordance with Parts 21, 43, and 91 of the Federal Aviation Regulations[.]"

46. Here, the Court can credit Viking's representations that the accident aircraft was airworthy under CAR Part 3.328 as "express representations," *Baughn v. Honda Motor Co*., 107 Wn. 2d 127, 151–52, 727 P.2d 655, 669 (1986) (claim of breach of express warranty may arise "when a manufacturer makes express representations, in advertising or otherwise"). And even if the Court credited that Mr. Munich's/Viking's representations about airworthiness contained a "warranty [that] explicitly extends to future performance of the [aircraft]," RCW 62A.2-725(2), that warranty cut off when Mr. Lambert (or his son) in 2022 inserted the unauthorized moisture seal, which was a major alteration not performed in accordance with Part 43, Appendix A. Although NWS's breach of express warranty claim is not barred by the statute of limitations, it

fails on the merits as a matter of law because as of 2014, any warranty had extinguished by virtue of NWS's unauthorized major alteration to the HSTA.

47. To this extent the Court **GRANTS** Viking's motion for summary judgment. NWS's breach of warranty claims are **DISMISSED WITH PREJUDICE**.

NWS's Claim for Punitive Damages

48. NWS argues it is entitled to punitive damages because "de Havilland represented to the Canadian DOT and the United States Civil Aeronautics Board that its DHC-3 model aircraft complied with CAR 3 as Amended to November 1, 1949, when in fact it does not." Dkt. 459 at 27.

49. "[B]ecause there is no historical basis for allowing punitive damages in unseaworthiness actions, and in order to promote uniformity with the way courts have applied parallel statutory causes of action, we hold that punitive damages remain unavailable in unseaworthiness actions." *The Dutra Grp. v. Batterton*, 588 U.S. 358, 361 (2019). Punitive damages are not available for other general maritime law claims, including a seaman's claims of gross negligence and unseaworthiness of the vessel. *See Snyder v. L & M Botruc Rental, Inc.*, 924 F. Supp. 2d 728, 735 (E.D. La. 2013) ("*Miles* held that a general maritime action for wrongful death based on unseaworthiness exists, but, because Congress chose to limit the availability of non-pecuniary damages under the Jones Act and the Death On the High Seas Act, the availability of non-pecuniary damages for wrongful-death actions brought under general maritime law must likewise be limited.") (citing *Miles v. Apex Marine Corp.*, 498 U.S. 19, 37 (1990)).

50. NWS seeks to elide this line of authority by recasting its claim as sounding outside of the question of airworthiness: "NWS'[s] punitive damages claim is for de Havilland's representation that its DHC-3 model aircraft complied with CAR 3 as amended to November 1, 1949, when in fact they do not." Dkt. 459 at 27 n.3.

51. The Court rejects this artful recharacterization of NWS's claim. As discussed above, NWS's only remaining claim in this case is one for negligence under the Pennsylvania

Rule. At the heart of that claim, NWS argues that the HSTA did not comply with CAR Part 3.328 because it did not feature any stops which, if present, would have prevented the abrupt downward pitch of the accident aircraft and the fatal crash. Because of this alleged flaw in the HSTA, NWS alleges that the accident aircraft was not airworthy. This is a negligence claim that hinges on the accident aircraft's alleged unairworthiness. Punitive damages are barred under *Batterson* and the persuasive authority in *Snyder*. For these reasons, the Court finds that punitive damages here are categorically precluded.

52. Even if punitive damages were not precluded, NWS has failed to demonstrate any facts to support a finding of willful wanton, or outrageous conduct. And, to the extent NWS argues that the alleged false representation of compliance with CAR Part 3.328 itself can support a punitive damages claim, that is insufficient to demonstrate that such alleged misrepresents where done "knowingly" or "fraudulently," especially where, as here, the accident aircraft passed previous FAA inspections. *Cf. Rehler v. Beech Aircraft Corp.*, 777 F.2d 1072, 1084 n.19 (5th Cir. 1985) (Rejecting jury instruction for fraudulent misrepresentation because "the determination whether the aircraft model satisfied the Civil Air Regulations was a matter wholly within the province of the FAA. It would have been improper for the jury to second-guess the FAA's decision that the [aircraft] satisfied the FAA standard.").

53. For these reasons, a claim for punitive is not actionable here and must be **DISMISED WITH PREJUDICE.**

54. NWS's negligence claim may proceed to trial under the Pennsylvania Rule, and NWS may seek recovery for "other property," namely the added-on equipment and other items incidentally inside the downed accident aircraft. *See* Order, *supra*, Paragraph 32.

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55. Consistent with the foregoing, the Court **DENIES** Northwest Seaplanes' motions for summary judgment against Viking, filed at Dkt. 421 and 525, and its cross-motion for summary judgment against Viking, filed at Dkt. 459. The Court **GRANTS in part and DENIES in part** Viking's motion for summary judgment against NWS, filed at Dkt. 428.

DATE this 14th day of November, 2025.

Judge David Whedbee
King County Superior Court

JUDGE DAVID WHEDBEE
KING COUNTY SUPERIOR COURT
516 THIRD AVENUE, E-201
SEATTLE, WASHINGTON 98104

King County Superior Court
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