

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

COASTAL AVIATION, INC.,	:	3:01cv744(WWE)
Plaintiff,	:	
	:	
v.	:	
	:	
UNITED STATES OF AMERICA,	:	
Defendant.	:	

RULING ON DEFENDANT'S MOTION TO DISMISS

The plaintiff, Coastal Aviation, asserts an action pursuant to the Federal Tort Claim Act ("FTCA"), alleging that the Federal Aviation Administration ("FAA") negligently issued Nelson Balancing a certificate to perform work on crankshafts for aircraft engines.

Defendants have filed a motion to dismiss this action pursuant to Federal Rule of Procedure 12(b)(1), arguing that this Court does not have subject matter jurisdiction due to the statute of limitations of the FTCA.

BACKGROUND

The following factual background is taken from the allegations of the complaint, which are considered to be true for purposes of ruling on this motion. The Court also refers to facts reflected in exhibits submitted by the parties.¹

¹On a motion to dismiss for lack of subject matter jurisdiction, a court may refer to evidence outside the pleadings to resolve jurisdictional facts. See Zappia Middle E. Constr. Co. Ltd. v. Emirate of Abu Dhabi, 215 F.3d 247, 253 (2d Cir. 2000).

Plaintiff is a small engine repair business. In September, 1996, plaintiff sent 28 crankshafts to Nelson Balancing Services to provide airworthiness certification for the crankshafts, a task which can only be accomplished by an FAA certificated repair station.

In December, 1997, and January, 1998, crankshafts that had been certified as airworthy by Nelson Balancing caused engine failure in two planes belonging to plaintiff's customers. An inspection revealed that other crankshafts serviced by Nelson Balancing were defective. By February 6, 1998, plaintiff had completed repairs on two of the defective crankshafts.

Plaintiff informed the FAA of the problem with crankshafts serviced by Nelson Balancing. On February 5 and 10, 1998, the FAA issued letters to alert owners, operators, and maintenance providers of the problem with crankshafts serviced by Nelson Balancing.

On February 17, 1998, Lee Field, president of Coastal Aviation, sent a letter to Senator Joseph Lieberman concerning a request for information under the Freedom of Information Act ("FOIA"). In that letter, he wrote, "I further allege that surveillance by the FAA Flight Standards District Office ("FSDO") in Bedford, Massachusetts, which had jurisdiction over that repair station, was improper and inadequate."

Two years later, on February 17, 2000, plaintiff filed a claim with the FAA. In that claim, plaintiff stated:

The FAA, in their post certification inspections of NBS, as seen in the ISIS, PTRS reports, failed to thoroughly, conscientiously and diligently complete these tasks in accordance with FAA Order #8300.10, Chapter 164 and 165, thereby not ensuring compliance with current applicable FAR's....Had the FAA forced NBS to correct the obvious deficiencies and comply with the FAR's or revoked their certificate in the Spring of 1995, then the extensive damages to Coastal Aviation and other NBS customers would not have occurred, and a very real known threat to public safety would have been eliminated.

DISCUSSION

A motion to dismiss under FRCP 12(b)(1) "challenges the court's statutory or constitutional power to adjudicate the case before it." 2A James W. Moore et. al., Moore's Federal Practice, ¶ 12.07, at 12-49 (2d ed. 1994). Once the question of jurisdiction is raised, the burden of establishing subject matter jurisdiction rests on the party asserting such jurisdiction. Thomson v. Gaskill, 315 U.S. 442, 446, (1942).

Defendant asserts that plaintiff's claim accrued by February 10, 1998, rendering untimely any claim presented to the FAA after February 10, 2000. Plaintiff counters that the diligence-discovery rule applies to postpone the accrual of its claim.

The FTCA provides that a tort claim may be filed against the United States if "it is presented in writing to the appropriate Federal agency within two years after such claim accrues." 28 U.S.C. § 2401(b). A tort claim accrues at the time when the plaintiff knows or reasonably should know that he has been injured and what caused the injury. See United States v.

Kubrick, 444 U.S. 111, 121 (1979).

The "diligence-discovery rule of accrual" applies where the government conceals the acts giving rise to the claim, or where plaintiff would reasonably have had difficulty discerning the fact or cause of injury at the time it was inflicted. Kronisch v. United States, 150 F. 3d 112, 122 (2d Cir. 1998). According to this rule, accrual may be postponed until the plaintiff has or with reasonable diligence should have discovered the critical facts of both the injury and its cause. Barrett v. United States, 689 F. 2d 324, 327 (2d Cir. 1982), cert. denied, 462 U.S. 1131 (1983).

In Barrett, the Second Circuit observed that the diligence-discovery rule of accrual is not often applied outside the medical malpractice area, but it could be appropriate in non-malpractice cases where a plaintiff faces comparable problems in discerning the fact and cause of the injuries, such as instances of an "inherently unknowable injury" or deliberate government concealment.

Here, plaintiff has not alleged, and there is no evidence that indicates, that the government deliberately concealed its negligence. Nor is this an instance involving an "inherently unknowable injury." Plaintiff was a certified repair station, and was therefore aware of the government's role in certifying Nelson Balancing. Furthermore, the FAA's certificating and inspecting functions are a matter of public record published in

the Code of Federal Regulations. Accordingly, the diligence-discovery rule does not apply.

The pleadings and evidence submitted demonstrate that, by February 10, 1998, plaintiff knew that Nelson Balancing's faulty workmanship caused the defective crankshafts, and that it would suffer expenditures to remedy the situation. Accordingly, at that time, given plaintiff's awareness of the FAA's responsibility to certify Nelson Balancing, plaintiff had sufficient knowledge of its injury and the cause for its claim to accrue. Kronisch instructs that a plaintiff need not have compelling proof of the validity of the claim in order for the claim to accrue. 150 F. 3d at 123 n.6. The motion to dismiss will be granted.

CONCLUSION

The motion to dismiss [doc. # 8] is GRANTED. The clerk of court is instructed to close this case.

SO ORDERED.

WARREN W. EGINTON
SENIOR UNITED STATES DISTRICT JUDGE

Dated at Bridgeport, Connecticut this ___ day of November, 2001.