

# Attorney Says Rapid Growth of Aviation Brings New Litigation Concerns

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Miami attorney Steve Marks has represented victims in many of the biggest plane crashes of the past 25 years.

As co-managing partner of Podhurst Orseck, Marks has won hundreds of millions of dollars for those who lost loved ones in crashes such as SilkAir Flight 185 and Bashkirian Airlines Flight 2937.

He is now representing 40 families of passengers on Malaysia Airlines Flight 370, which disappeared in March 2014.

Marks recently sat down with the Daily Business Review to highlight the trends he sees in aviation litigation around the globe.

**What are some of the biggest ways that airlines have opened themselves up to litigation in recent years?**

Aviation has expanded quickly in an environment where regulations don't exist or are not followed. New pilots are getting hired without the kind of training you get in the United States. You're seeing, particularly in Asia, far more accidents. If you look at the most recent accidents, MH370 [was] Malaysian Air, you had MH17 [from] Malaysian Air, you had Asiana from Korea and then you had AirAsia, which is another Malaysian company.

What you also see is criminalization of aviation accidents. The ValuJet case [arising from a 1996 plane crash in the Everglades] was the first case where criminal charges were ever brought.

[Today,] almost every major crash around the world has resulted in criminal charges. Germanwings [Flight 9525, which crashed in the French Alps in March,] I think is going to be the first one where you're going to see senior management actually be criminally prosecuted.

### **How does the court's power of forum non conveniens affect cases that involve overseas crashes?**

[U.S. courts often] move cases for 'convenience purposes' when the only convenience is for the defendant to avoid facing a U.S. jury, or the convenience of the court in not having to deal with the case. Fortunately, the courts have been much more receptive to that argument in the last two years. Boeing has sought to have cases transferred to the Philippines and other foreign jurisdictions, and they've lost. One judge said to Boeing's counsel during an argument, 'How is it inconvenient for you when you're right across the street from the courthouse?' That, fortunately, is one little pocket of law which is going for the victim's way.

### **What are some of the challenges for plaintiffs in these aviation lawsuits?**

Discerning what foreign law is, as well as which foreign law shall apply, is often a challenging exercise. In some of these countries, the law is not developed like it is in our system. You can get opinions from lawyers on both sides as to what normally occurs, but to go through and look for reported decisions or written statutory rules that our courts are comfortable using can sometimes be challenging.

An enjoyable challenge is understanding cultures. You need to be sensitive, because if you're not, you can very quickly offend. They're also very expensive cases to handle. The travel is one expense. [Document] translation is a huge expense.

### **You've worked on cases involving small craft such as helicopters and balloons. Do you think there will be new waves of litigation as the FAA finalizes its rules for the commercial use of drones?**

There's no doubt that there's going to be litigation over the use of drones. I think it's going to be in a few different areas. One, what are the courts going to do with the expectation of privacy when it comes to drones?

Two, the liability of the drones harming people. They're going to malfunction, for sure. Airplanes are heavily maintained, heavily regulated and have redundant safety systems—they

still have mechanical problems. Whether it's going to be a car accident where a driver overreacts and kills somebody, or whether it hits somebody in the head, there's going to be liability. That's going to be an interesting area of the law—who's going to pay for that? It's not a homeowner's policy in all probability. It's not an aviation policy, because it's not an airline, so no one's going to have insurance for it. There's not going to be a recourse for the people.

Perhaps the biggest danger is the drones interfering with air travel. I know there's going to be rules on restricting drone use around glide slopes or near airports, but there's going to be a kid who lives in the neighborhood who's going to be flying his drone near an airport. Now, you would think something like that couldn't bring down an aircraft, but birds can bring down airplanes.

So they're not to be taken lightly. I think they're a huge future safety concern and I think the government has been very slow to enact restrictions. Drones are going to be a Wild West of the law.