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Interview with Steven Marks

Airbus Failed

One of the most experienced lawyers in the struggle for the compensation of air disaster victims states that official investigations have been conducted by potential defendants.

Lucila Soares

Selmy Yassuda



"Accidents happen because someone makes a mistake. And that needs to be pointed out so that safety conditions can be improved."

U.S. lawyer Steven Marks defended the rights of the families of victims in almost 100 air accidents, including some of the major civil aviation tragedies in the last twenty years. Through the years, having specialized in investigating the causes for those disasters, he has developed a conviction: in order to identify the culprits

and obtain fair compensation for damages, it is essential to not depend exclusively on official investigations. Marks is a partner at Podhurst Orseck, a prominent law firm headquartered in Miami. He was in Rio de Janeiro on the 15th of this month. While visiting the offices of Leoni Siqueira, his associates in the representation of twelve Brazilian families of the victims in the Air France Airbus that crashed at the end of May, he gave VEJA the following interview.

Which has been the most difficult case of your career? The most difficult, challenging and rewarding, both emotionally and legally, was the 1997 tragedy of a SilkAir flight with a Boeing 737 that flew from Jakarta, capital of Indonesia, to Singapore, which crashed killing all 104 people on board. We represented 33 families. Some previous accidents had pointed to problems with a valve in the rudder control system, which defect could lead to the pilot losing control. However, at the time of the SilkAir accident, the first theory that prevailed was that the pilot had committed suicide, because the cockpit voice recorder and the flight data recorder were disconnected. I never believed in that theory and for the next six years, I insisted in searching for the real cause. The trial lasted two months, and all the members of the jury ruled in our favor. The families of three of the flight families will receive a total of 43.6 million USD. The repercussions of that case contributed to all 4,000 of the 737 Boeings in operation throughout the world to have that defective valve replaced. That way, the rudder control system became safer. What's ironic about all of this is that the part's manufacturer still invoiced plenty for its own error. Each new valve cost 950,000 USD. The manufacturer made almost \$4 billion dollars.

What is different about the Air France 447 flight tragedy as compared to other accidents in which you have defended the victims' families? That disaster will be one of the very few commercial plane accidents in which the information from the black box will not be available. That's commonplace in accidents involving small aircraft and does not impede the reconstruction of the accident and its causes. But it is extremely rare in commercial Aircraft the size of an Airbus.

Why do you defend independent investigations to find out the causes of air accidents? Are official investigations untrustworthy? It's not that. My point is that manufacturers end up playing an extremely important role in the investigations to establish the causes. In the case I have just mentioned, the black box was removed from the aircraft by the Indonesian government and sent to the manufacturer, the American company Honeywell. The report made by Honeywell led to believe that the pilot had voluntarily disconnected the voice recorder, making way for speculating that he had committed suicide, taking the crew and passengers with him. That shows that, even when the black box is recovered intact, the reading and interpretation of the data is not entirely free from being called into question. That is why, when we're defending the interests of the victims' families, we cannot rely only on official investigations, because they are conducted by representatives of firms that are potentially responsible for the accident. In the case of the AF-447, the fact that the investigations are being coordinated by a French official agency (the Bureau of Investigations and Analysis, or BEA, by its French acronym), it becomes even more vital that an independent investigation is conducted. The interests that the French government has in Air France and in Airbus cannot be discounted.

How is a private investigation conducted? It is an operation that costs many millions of dollars and involves hiring experts in various fields - pilots, air traffic

controllers, meteorologists, as well as specialists in data interpretation and mechanics. That team follows and questions each conclusion reached by the official investigation, gathers documents, assembles and verifies it's own hypotheses. The goal is to uncover the truth and find the evidence to back up that truth. That is what families who come to us depend on in the struggle to obtain the compensation they are entitled to within the Justice system.

What types of compensation are the families entitled to? Each case is different. A widow who is a housewife, with no kids and no parents, is a very different case than a 45-year old professional male with four children. In most countries, the laws guarantee economic compensation for death, taking into account the current earnings, how long the person would have continued to work, and calculates the amount that would be necessary to support the living standards of the family. That's the financial calculation. Obviously, it's not perfect, because no one has a way of knowing how anyone's professional career

"The process for calculating the economic value of compensation is not perfect. No one can predict the future. But it must be considered that the victims would have done everything they had planned to do in their lives."

path would evolve, and whether or not it would be successful. However, why would the parties who are responsible for that person's death assume the possibility that he or she would not attain professional success? On the contrary. It must be assumed that [the person] would have done everything they had planned to do in their lives.

Is it possible to compensate the pain and suffering of one who loses a family member? That is an

intangible, immeasurable loss, which is not governed by objective factors such as the ones considered when calculating compensatory damages for a financial loss. On that issue, the United States has a system that significantly favors families: cases are tried by a jury of ordinary men and women, who value human life and believe that companies that are responsible for someone's death must also pay for the suffering caused to his or her family. That makes it possible to obtain 10 or 20 million dollars for pain and suffering in the American system of justice. In the United States, we always recognize that the jury system is the best company control tool, because it is the citizens who decide what is or is not acceptable in their behavior. That's why we always want to take cases to the United States. There is no better place to file a lawsuit for compensatory damages. Besides the jury system, there is a tradition of mandatory discovery of evidence and summoning of witnesses that is unique in the world. Proceedings are fast and compensation amounts are high, as much as the penalties are severe.

In the case of Air France Flight 447, is it possible to sue the responsible parties in the United States? That is a pretty distinct possibility. Besides the air carrier, which is the first party to be sued when an accident occurs, it is possible to file a legal action against the aircraft manufacturer or any supplier that had contributed to the disaster. In this specific case, Airbus, Honeywell and other parts suppliers could be sued in the United States. Air France may also be sued within the American justice system.

Are planes with highly automated

systems, such as the Airbus

A330-200, more likely to be involved in accidents? This discussion reminds me of my grandfather, who had a mechanical typewriter and lived and died hitting those keys. No matter how good they were, mechanical typewriters could not survive the progress of technology. Combined with a fly-by-wire system (*a digital system for remote activation of an aircraft's external moving parts, such as the aerodynamic brakes or the rudder*) is the way of the future. In general, the problem with automation and computers is that, when they work right, they're fantastic. When something goes wrong, they become the worst villains. That idea is driven by the illusion that it is possible to have a fail-proof system, and unfortunately, we'll never have a fail-proof system. They all have their faults, and safety is strengthened by finding those faults. It is a mistake to conclude that fly-by-wire should be tossed aside because it is dangerous.

Could this be a case similar to the Boeing 737, where a specific part needs to be replaced in all aircraft? Yes. That has already been made clear as to the pitot (*an external tube that measures airspeed and furnishes data on the speed of the aircraft*). However, the investigation findings might point to other necessary changes. We are faced with a relevant fact: the manufacturer is in a unique position, as it is able to manage the problems caused by its products. That gives him certain responsibilities within aviation rules. They have to monitor and track their aircraft and the any problems they've had in a way that is impossible for the operators. In this specific situation, the product clearly failed. There is no doubt in my mind that the Airbus failed. This was not a problem caused by the pilot. It was a problem with the Airbus.

Airbus had issued a warning about the problem with the pitot. Can that be used as evidence? If a company manufactures a defective product, it is responsible for that. To issue a warning about the existence of a defect does not exonerate it from liability. Depending on the case, it is necessary to have made an express recommendation to replace the potentially defective parts. Notices such as those made by Airbus do not force the user to make any product change at all. They never told anyone: "We have a flight safety problem, and we recommend that piece X be immediately replaced due to A, B, C and, because it is our mistake, we are making the replacement at no charge." Accidents are not acts of God. They happen because someone makes a mistake. They are frequently not the result of one, but rather a series of problems that happen because no provisions were taken to prevent them. This needs to be pointed out; we must show that it shouldn't have happened that way, so that safety conditions can be changed and improved.

Knowing so much about pilots, planes and flaws in general, aren't you afraid to fly? I'm always aware of all the noises in the plane, even those that are imperceptible to those with unaccustomed ears. But I have learned to clear my head of any and all worries about that. Most traveling is very safe; statistically, airplanes continue to be the safest means of transportation. When disaster strikes, obviously it causes a lot of commotion, because many people die at the same time, but the truth is that traveling on a couple of thousand flights that take off every day is safer than riding your car. That's why I'm really not afraid to fly.

Not even watching so closely the suffering of the families who hire your services? That doesn't make me be afraid, but living with that suffering is something that is becoming more and more difficult for me. Maybe because I'm getting older. You see your own kids, your family, and it's inevitable to imagine

yourself in that situation.

But you stopped piloting. Yes, because I have two children and I've seen too many accidents with pilots who are much better than I am. But I miss it. Piloting is a great experience. I used to love it. I even did some air acrobatics.

How do you choose an airline when you travel? I tend not to fly low-cost regional airlines. Besides that, I no longer fly in helicopters. Because there are only two types of helicopters: the ones that have crashed, and the ones that will crash.

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