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Liability for Germanwings Crash May Still Rest With Airline, Insurer

Co-pilot's secrecy wouldn't necessarily exonerate Lufthansa, lawyers say

By Robert Wall Updated March 29, 2015 5:05 p.m. ET

LONDON—The unusual circumstances surrounding the Germanwings crash won't necessarily free the airline and its insurers from claims of negligence, aviation lawyers said.

[Deutsche Lufthansa](#) AG, Germanwings' parent company, and its insurer will likely still face large legal liability claims in the crash of Flight 9525 despite indications that the co-pilot, who is suspected of deliberately [crashing the plane](#), hid medical problems from his employer.

"The airline has unlimited liability unless it can prove it is free from fault," said Steven Marks, a partner at aviation litigation firm Podhurst Orseck. The crash of the Airbus A320 on Tuesday killed all 150 people on board.

Flight 9525 co-pilot Andreas Lubitz [was suffering from depression](#) and had been excused from work by a neuropsychologist for a period including the day of the crash, according to a person familiar with the investigation. He ignored the advice and reported to work without informing the airline of the doctor's note. Investigators were working to establish whether Mr. Lubitz intended to commit suicide.



Forensic experts of a French victim-identification unit work on Saturday near the site of the March 24 crash, in a photo provided by the force. *PHOTO: REUTERS*

Even so, the carrier could struggle to demonstrate it wasn't partly at fault. "Apart from inadequate psychological monitoring, the carrier could have enacted the two-person cockpit rule that might have prevented the accident," Mr. Marks said.

The pilot of Flight 9525 had left the cockpit temporarily and appears to have been [locked out by Mr. Lubitz](#) as he set the plane on its descent that ended in its crash in the French Alps. European rules don't require that two crew members be in the cockpit at all times, though many carriers including Lufthansa last week moved to such procedures in the wake of the crash.

Lufthansa could be liable for more than the approximately \$150,000 the families of victims are automatically entitled to receive under international rules governing commercial flying, said Kevin Durkin, a personal-injury lawyer specializing in aviation for Clifford Law Offices. Families' rights to make further claims aren't waived by accepting those payments.



Forensic experts of a French victim-identification unit work on Saturday near the site of the March 24 crash, in a photo provided by the force. *PHOTO: GENDARMERIE NATIONALE/AGENCE FRANCE-PRESSE/GETTY IMAGES*

Lufthansa on Friday said it would pay an initial sum of €50,000 (about \$54,000) per person to the relatives of Flight 9525 passengers. The payments wouldn't affect potential further claims made by the families, the airline said.

In the aftermath of some crashes, next of kin have been able to win multimillion-dollar awards, Mr. Durkin said. After a crash, airlines tend to settle quickly to avoid further damage to their reputation from a prolonged legal battle, he said.

Lufthansa, which has struggled to meet financial targets amid labor unrest and restructuring measures, wouldn't pay the legal costs itself. The financial liability rests with its insurer, a unit of Germany's [Allianz](#), which typically is reinsured. The airline later could face higher insurance premiums though those would remain a small part of a carrier's costs compared with fuel and staff, an airline-insurance specialist said.

Allianz on Friday said it retains the liability element of the policy regardless of the co-pilot's actions. The company said it wouldn't disclose detailed claims estimates it considers confidential nor the extent to which it is reinsured.

Allianz also insured Malaysia Airlines, which suffered two jetliner tragedies last year. [Flight 370 was lost](#) more than a year ago while traveling from Kuala Lumpur to Beijing with 239 people on board. Four months later, in July, Flight 17 was shot down over eastern Ukraine killing all 298 passengers and crew. Allianz also insured AirAsia Flight 8501 that crashed in Indonesia in December killing 162.

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Costs to cover the loss of the Germanwings plane shift to Lancashire Holding’s Cathedral unit that wrote the insurance to cover such an event in case of war or a deliberate act, according to aviation consultancy Ascend Worldwide.

The size of legal payments could depend on where cases are filed. Payouts for cases in Germany could be limited compared with those for families who bring their cases in the U.S., where large settlements are easier to secure, Mr. Marks said. Factors such as where a victim lived, bought the ticket and was traveling to influence where a case can be brought.

Rules on what insurance airlines are required to carry vary by country, though it is standard to have third-party liability that covers payments for the loss of life or damage to others, regardless of who is at fault. Airlines typically hold insurance to cover the loss of a plane in accidents or through deliberate actions.

Airline insurance premiums last year reached about \$1.65 billion across the industry, said Paul Hayes, head of safety and insurance at Ascend Worldwide. Low accident rates and an abundance of insurance providers has caused premiums to fall by more than half since they spiked after the Sept. 11, 2001, terrorist attacks in the U.S.

Even last year’s high-profile accidents involving two Malaysia Airlines planes—one that was lost and another that was shot down over Ukraine—had relatively little impact on premiums, Mr. Hayes said.

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