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After the grief of air disasters, the legal battles begin

By: Eric Randolph

When the shock of losing loved ones in an air disaster starts to subside, grieving families often turn to courts for justice and compensation to rebuild their lives.

US lawyer Steve Marks has worked with the families of victims from nearly every major plane crash in the past 30 years, including the MH370 aircraft shot down over Ukraine last year and the Air France plane that crashed into the Atlantic Ocean in 2009.

He told AFP about the process that victims' families will be going through in the wake of the Germanwings Airbus crash in the French Alps this week that killed 150 people.

- What is the first stage for families?

"In this early stage, people are focusing on supporting one another, getting emotional support, but eventually they will need to start putting their lives back together," said Marks.

Children usually recover quickest, he said, but "can block their emotions and that can develop into anger later on."

"Many families don't have savings and face critical hardships, especially if they have lost the main breadwinner. If the airline does the right thing and complies with European rules that makes things easier, but if they don't then families have to select legal counsel and often they are acting emotionally and make bad decisions.

Unfortunately, there are a lot of "chasers" that pester victims early on, he said, referring to opportunistic legal firms.

- Do families feel guilty about putting a price on the death of loved ones?

"Anger and retribution is what drives families. Their loved ones have been killed, and the overriding feeling is to hold the responsible party accountable -- that's very natural," said Marks.

He argued that litigation is the only way to ensure aviation safety, giving the example of the Silk Air flight between Indonesia and Singapore that crashed in December 1997. Boeing initially blamed pilot error, but a Los Angeles court later put the blame on a tiny part in the rudder.



The first family won \$45 million (40 million euros), and 40 more families followed suit, while the part had to be replaced in every single Boeing 737, costing the industry some \$4 billion.

"A European airline crash tends to lead to compensation in the mid-hundreds of thousands up to many millions, depending on the circumstances of the family," said Marks.

- Who is liable for an accident such as this?

Unless they can prove they are totally free from fault, carriers face an unlimited financial liability, said Marks. Aircraft manufacturers can also be liable.

Getting a result can take a long time. Marks just concluded a 13-year case into Russia's Bashkirian Airlines mid-flight collision with a DHL cargo plane over Germany in July 2002 that led to families receiving some \$3 million each.

- Are carriers ever free from fault?

"It's hard to imagine any situation where the carrier is free from any fault, and I've never seen it," said Marks.

"Even the Lockerbie bombing -- when a terrorist blew up the plane -- the courts still found the carrier 'wilfully at fault' for not checking the bags in the hold.

"And even the MH370 -- shot down by Russian or Ukrainian forces -- the carrier has fault because they chose to divert the plane over Ukraine when all other airlines were not following that route."

He said that case has been the most challenging: "You're dealing with tough, repressive governments.

"The good news in this week's case is that Lufthansa and the insurance companies are the most responsible in the world."

But he added that "Germany is a horrible forum to hear the case, and France is not much better" because liability and compensation rules are much tougher.

"If at all possible the families should try to have the case heard in Spain."

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