

## Airline's switch riles MH370, MH17 families



*Families of victims from the MH370 and MH17 tragedies claim Malaysia Airlines is delaying claims for compensation.*

SAM BUCKINGHAM-JONES, *The Australian*

The airline behind doomed flights MH370 and MH17 has been accused of frustrating and delaying claims for compensation from families of victims by creating a new, almost identically named business it says is not connected to the old company.

Almost three years after the two disasters, dozens of Australian relatives of those who perished on Malaysia Airlines flight MH370, which crashed into the Indian Ocean, and MH17, which was shot down over Ukraine, have received only small lump-sum payments from the carrier.

Documents filed in a US court on behalf of dozens of victims of MH370 against the airline and its insurer Allianz — obtained by *The Weekend Australian* — reveal Malaysia Airlines has been accused of attempting to “dodge” its obligations to those who died and their relatives.

MH370 vanished on a scheduled flight from Kuala Lumpur to Beijing on March 8, 2014, with 239 people on board. Its radar transponder was turned off and radio contact was broken. Radar and tracking data indicate the Boeing 777 reversed course and flew towards the southern Indian Ocean.

MH17 was en route from Amsterdam to Kuala Lumpur on July 17, 2014, travelling over conflict-hit Ukraine, when it disappeared from radar. A total of 283 passengers, including 80 children, and 15 crew members were killed after the plane was hit by a Russian-made Buk missile.

The company received nearly \$2 billion in state aid and its workforce was slashed in late 2014 after a dedicated act of Malaysia's parliament — known as “Act 765” — created Malaysia Airlines Berhad in the place of the former Malaysia Airline System Berhad.

Lawyers acting for both companies insist the new entity is not a successor to the old, but US lawyers acting for victims of MH370 disagree.

Mary Sciavo, who represents 98 victims and victims' relatives, wrote in a submission to the District Court for the District of Columbia: "This sleight of hand by the Malaysian government after hundreds of people on two Malaysian flights are killed in as many months, was clearly a blatant and illegal dodge of its responsibility to the dead, missing, grieving and bereaved.

"The facts of the airline's disappearance soon after the disappearance of MH370 is, should be and must be the subject of discovery even at this preliminary stage concerning the issues."

The airline is understood to have been paid more than \$200 million in hull insurance for the loss of the two aircraft, but has paid a roughly \$50,000 advance to victims' families so far.

Malaysia is one of 122 parties to have signed the 1999 Montreal Convention, which was created to fast-track compensation claims after plane disasters. Under the convention, relatives of victims are entitled to a quick payment equivalent to 113,000 special drawing rights, worth approximately \$200,000.

Unless the company can prove that it was not negligent, or that there wasn't a third party to blame for the tragedy, it can be sued for potentially unlimited damages. The amount families of victims can claim varies immensely between countries, as different legal systems handle compensation claims differently.

Ron Bartsch, chairman of international aviation safety consultancy AvLaw, said: "The Montreal Convention has failed on what was the promise of a new regime that would cover airlines and passengers. It seems if Malaysia Airlines are successful in frustrating their obligations under the convention, then I feel that this is going to be extremely detrimental to the families of the deceased."

Steven Marks, a US aviation litigation lawyer who is representing victims in a separate claim in the same court, said he was confident the insurer for Malaysia Airlines would pay whatever courts decided.

"We took a position they were attempting to play games regarding the restructuring and their obligation," Mr Marks said. "The court entered an order that the insurance coverage is not affected by any restructuring. There is no risk the families are going to be left empty, because of this reorganisation."

In a career spanning several decades, Mr Marks said he had not seen such an "irresponsible" way of handling its obligations under the Montreal Convention.

"It's not only irresponsible, but it is outrageously insensitive to the families who have suffered one of the most unusual tragedies in history," Mr Marks said. "No matter how long it takes, no matter how much money

we need to spend, we will get a good outcome for these families.”

David Hodgkinson, senior aviation lawyer at Hodgkinson Johnson, said that while rebranding was not uncommon, it might have consequences for actions under way.

“Malaysia has handled it badly,” Mr Hodgkinson said. “Because of the circumstances, it’s hard not to conclude they’re related ... it might have some effect in terms of action plaintiff lawyers might take. We won’t know until the end.”

Danica Weeks, whose husband Paul disappeared on MH370, said that while she was confident insurers would pay what was required, she was suspicious. “I’ve believed they have tried this,” she said.

A spokeswoman for Malaysia Airlines System (Administrator Appointed) said: “All claimants will be compensated in accordance with the applicable international convention and law.”