AEROSPACE

CRISIS MANAGEMENT FROM A LEGAL POINT OF VIEW

PRESENTATION TO VIETNAM AIRLINES – MARCH 2025



MERT HIFZI
HFW
T: +65 6411 5303
E: MERT.HIFZI@HFW.COM

OVERVIEW

- Preparation
- Immediate aftermath – steps to take
- Our priorities as lawyers
- Dealing with:
  - Families
  - The media and especially social media
  - Official Accident Investigators
  - Police
  - Plaintiff's lawyers
- Other exposures for the Airline and its insurers
- Summary

ARE YOU PREPARED?

- Crisis management manual
  - Part of regular staff training
  - Distributed to all stations
  - Continually updated by operations staff
  - Regularly reviewed by an experienced lawyer
- Staff training
- Availability of local support/facilities

- **EXPECT** thousands of telephone calls
- **EXPECT** immediate and substantial social media and conventional media pressure
- **EXPECT** disruption to airline operations
- **EXPECT** family pressure "they want answers"
- **EXPECT** enormous resource pressure on management time
- **EXPECT** in depth investigation of the operator
- **EXPECT** the accident area to be a crime scene

DISASTER MANAGEMENT:
THE MAJOR PLAYERS

- Who is in control?
  - The **airline** has to take the lead
  - Public expect the airline to be leading / managing a disaster
  - Insurer's role significant



The **airline** will contract with:

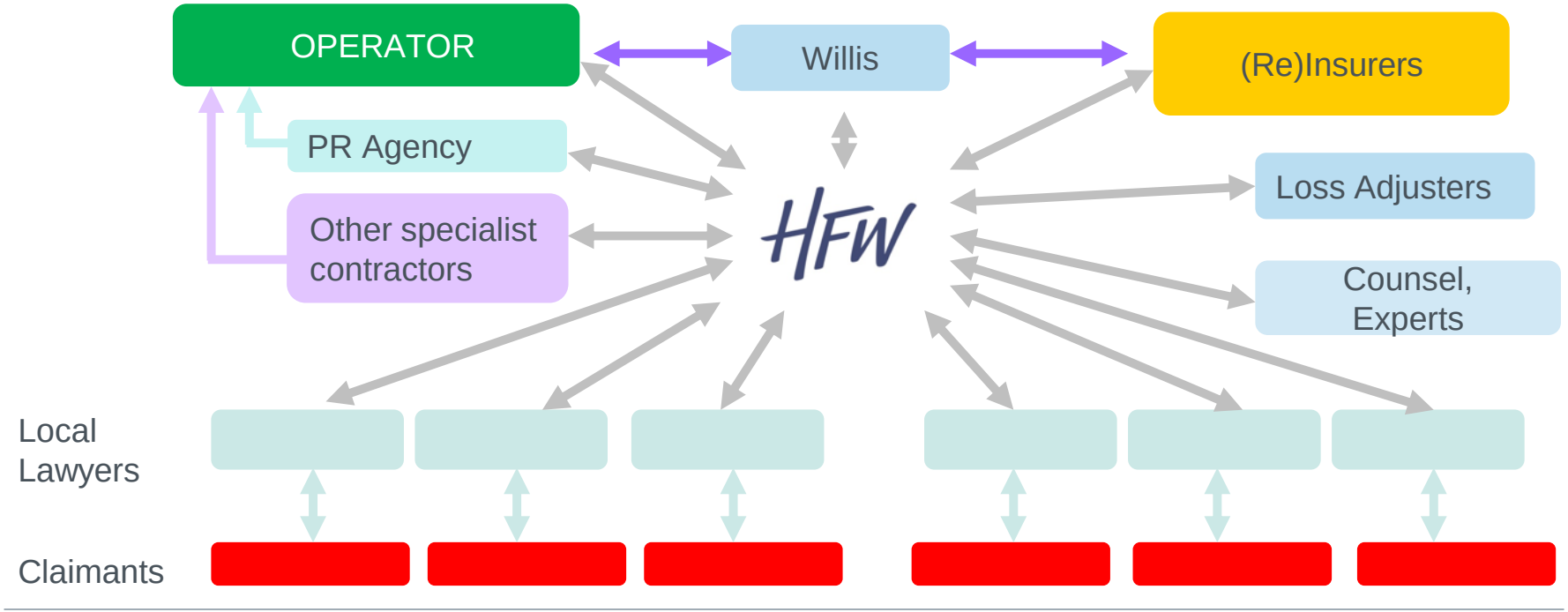
- PR Agencies
- Disaster Management Agencies including Family Assistance providers and disaster Victim Identification (DVI) specialists: Kenyons and Blakes
- Search and rescue and wreckage retrieval contractors (government agencies may step in)
- External legal providers
- Annual retainers?

The **insurer** will contract with:

- Adjusters / surveyors i.e. McLarens - represent interests of Insurers
- Aviation law firm i.e. HFW – represent the interests of the airline and its insurers
- The contracts: lawyer and adjuster and possibly a DVI specialist named on the insurance policy.

THE PARTIES INVOLVED WITH MANAGING A MAJOR LOSS

Major loss should be immediately advised to Willis



IMMEDIATE AFTERMATH – STEPS TO TAKE

IMMEDIATE AFTERMATH

- Immediate notification to brokers and insurers
- Implement Disaster Management Plan
- Collate basic facts and information
- Preserve evidence
- Air accident authority investigation
- Airline investigation
- Media/Social Media Interest
- Dealing with families of the deceased – burial, funeral, repatriation, counselling etc.
- Dealing with injured passengers/crew

WHERE WE SEE CHALLENGES

- Loss of family members can result in extreme anger and aggression
- Next of Kin (NOK) “demands” can be very unreasonable
- Any effort to reason with NOK may result in greater fury and more demands
- NOK’s tend not trust anyone:
  - Airlines, Foreign Governments, Their own Government or the media
- NOK’s will fuel rumours through social media
- NOK’s will use their Government to apply leverage on the carrier’s Government
- NOK’s will challenge all emergency response procedures that the airline has in place
- NOK’s listen to their lawyers!

Your brokers/lawyers provide informed counsel on how to manage your way through these challenges.

REASONABLE COSTS THAT MAY BE INCURRED AFTER A LOSS

- Airline's emergency team
- Search and rescue costs
- Sustenance
- First aid, hospital and medical services
- Repatriation of bodies or injured passengers
- Burial, cremation
- Site clear up
- Other acts of humanity

OUR PRIORITIES AS LAWYERS

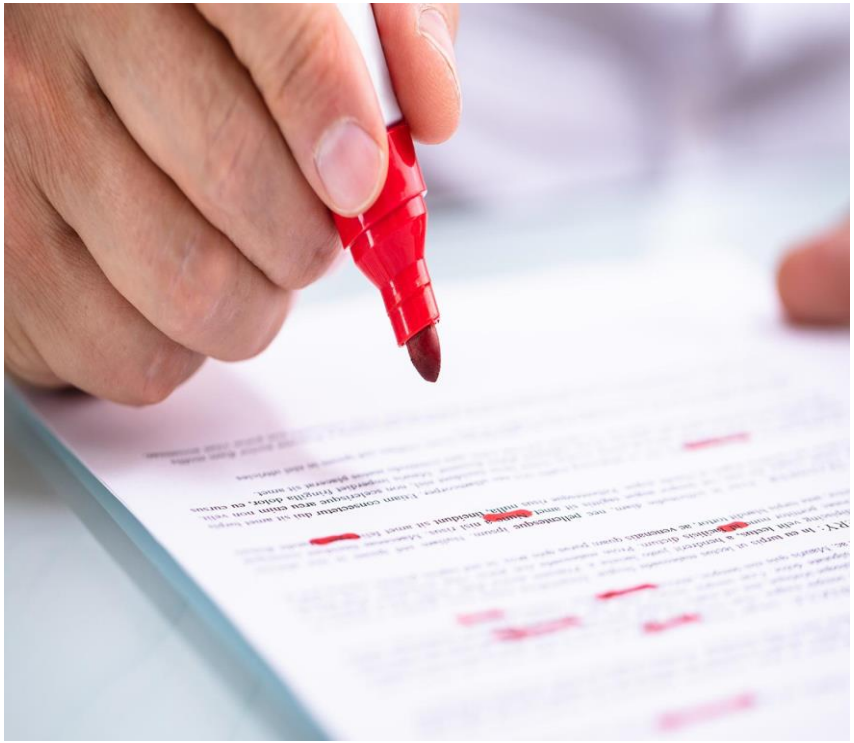
PRIORITIES FOR LAWYERS (1)

- Preliminary assessment of exposures for client/Insurers
  - Hull
  - Liabilities to passengers and crew
  - Liabilities to other third parties, e.g. Surface damage
- Exposure of other parties involved
- Jurisdictions where claims may be made
- Appointment of local lawyers in relevant jurisdictions



PRIORITIES FOR LAWYERS (2)

- Appointment of experts
- Advance payments to dependants of deceased passengers
- Obtain **all** relevant documentation from airline
- Reserves



DEALING WITH

- Families
- The media and especially social media
- Official Accident Investigators
- Police
- Plaintiff's lawyers

PASSENGER MANIFEST
FAMILIES

- Those that have legal right to see it include:
  - Accident Investigators
  - Police
  - Your lawyers!
  - Other government /official bodies



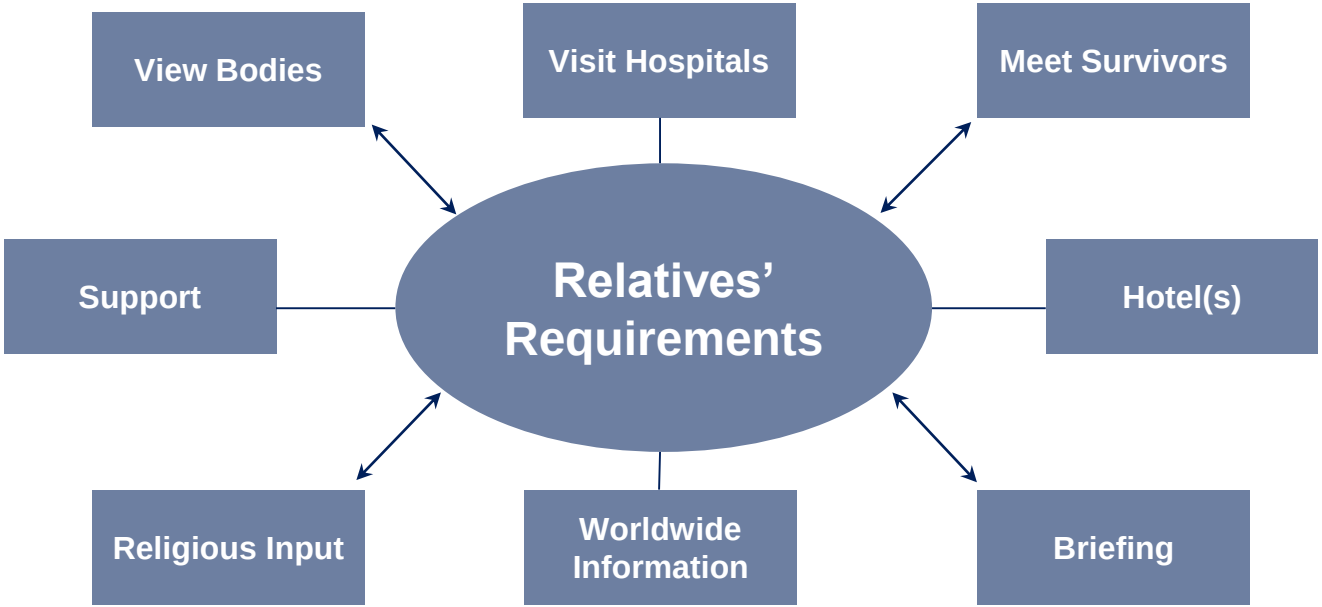
- **Must not** be disclosed to any third party who does not have a legal right to see it.
- Why?
  - Vital tool for Plaintiff lawyers to assist with identifying potential clients
  - Names could be published in media before families contacted or status confirmed
  - Enables hoax/bogus calls from cranks or media trying to secure more information

EMERGENCY MEDICAL CARE
FAMILIES

- Injured pax need to be seen urgently
- Frequently transported to local hospitals
- Hospitals may request indemnities from Airline in respect of costs of treatment
- Need standard form agreement which limits Airline's exposure



FAMILY ASSISTANCE – KEY REQUIREMENTS



US FOREIGN AIR CARRIER FAMILY SUPPORT ACT 1997

- Applies to foreign aircraft operators where an accident occurs in the US resulting in a major loss of life
- Foreign aircraft operators must file a plan with the US Secretary of Transportation and NTSB. Must include:
  - Plan for publicising a reliable toll-free number for use by families
  - Process for notifying families of the passengers involved in the accident
  - An assurance that such notice will be provided to the families as soon as possible after identification of the passengers
  - An assurance that families will be consulted regarding disposition of remains and personal effects
  - If requested, return to the family any possessions of the passengers
  - Provide assistance to the family to ensure that they are able to travel to and stay at the accident location
- Beware of heavy fines for non-compliance (e.g. Asiana Airlines)
- Be aware of any other applicable local laws / regulations

PROVISION OF FINANCIAL ASSISTANCE

- Programme will be devised by external lawyers, with input from airline
- Important to comply with any local law requirements
- Families will have immediate economic needs (e.g. rent and day to day living expenses)
- Airline will be under considerable internal and external pressure to make payments
- Important to proceed in a structured way that does not prejudice the airline's defence to any future claims
- Documentation for initial and advance payments to ensure right to credit against final settlement



TYPICAL FINANCIAL ASSISTANCE PROGRAMME

STAGE	INDICATIVE TIMESCALE (POST LOSS)
Initial Payment	24 – 48 hours
Advance Payment	2 weeks – 4 months
Final Compensation	1 year +

INITIAL PAYMENT

- Small payment (of r.g. USD 2,000 per passenger)
- Made to help ease immediate financial hardship
- Should be made to families as soon as possible after the accident (ideally within 24-48 hours)
- Payment should be made to the closest identifiable relative of the passenger
- Can be made in cash (e.g. at the Family Assistance Centre)
- A basic signed receipt should be obtained

Why make an initial payment?

ADVANCE PAYMENT

- Larger payment that is designed to assist families with their ongoing financial commitments
- Contemplated by MC99
- May be a local law requirement to make an Advance Payment
- The process of making an advance payment is normally as follows:
  - Circulate a family questionnaire to the families of the passengers to collect details of the passenger's family structure;
  - Identify the jurisdiction(s) where claims from passenger families are most likely and in each case, obtain legal advice on who is entitled to claim compensation:
  - Decide on an appropriate amount for the Advance Payment
  - Identify family members entitled to receive the payment under applicable local law;
  - Family members entitled to receive the payment sign a receipt, which allows the Advance Payment to be deducted from final compensation;
  - Make the payment by bank transfer.

The above process will be managed by the external lawyers, in close liaison with the airline, its brokers and Insurers.

FINAL COMPENSATION

- Amount of final compensation and process involved will vary considerably from case to case
- Family provide further information / documentation on passenger and family circumstances (including income) so that a settlement offer can be calculated
- If accepted, family sign a full and final release and discharge to protect the airline (and its insurers / reinsurers) from any further claims
- Aim is to settle claims out of court where possible
- Process will be managed by the external lawyers

- Key liaison person
  - Authority and experience to make decisions in the crucial early stages
  - Channel communication between the crisis management centre and airline management
  - Ensure that lawyer and surveyor/adjuster are fully briefed and updated
- Liaison with families and media
- Keeping the business running
- Restore morale

DEALING WITH THE MEDIA (1)

MEDIA

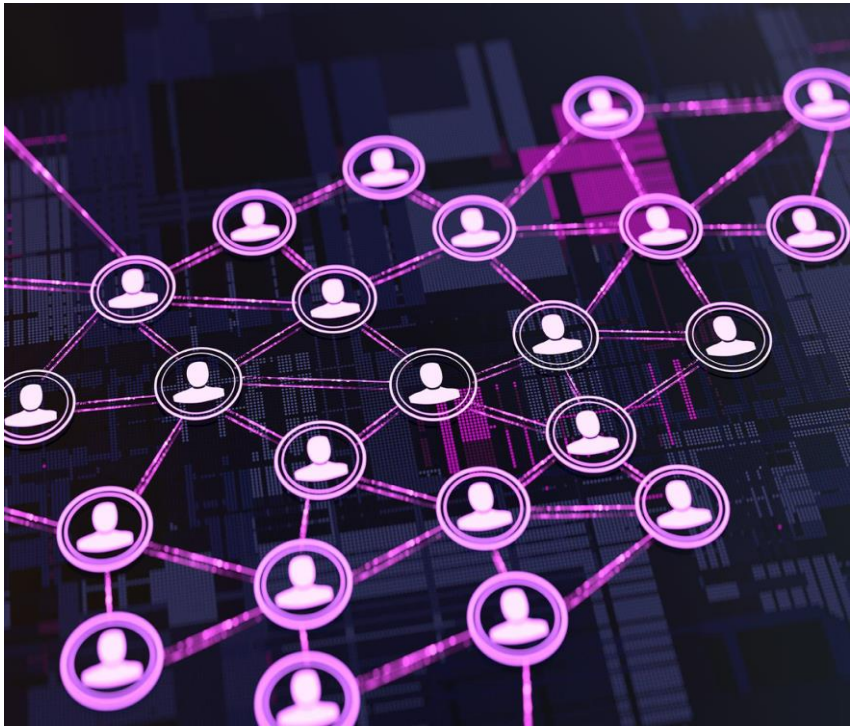
- Protect the airline's reputation – No admissions of liability and be careful with apologies!
- Preference for initial public contact to be by the airline itself through public relations department – one source of communication
- Conventional and Social Media

DEALING WITH THE MEDIA (2)
MEDIA

- Lawyers to assist with:
  - Drafting and reviewing public statements and press/social media releases
  - Drafting and reviewing correspondence with passengers and relatives of the deceased
  - Airline maintaining control over the handling of the accident
  - Achieving a balance between disclosure and co-operation and protecting the airline's position on liability



WHAT IS SOCIAL MEDIA?
MEDIA



- Social media is no longer an idle diversion or passing trend; rather, it is a pervasive technology which is imbedded in our society and culture and is used by almost every airline today in some fashion.
- Well over a billion internet users in Asia alone with figures estimating that at least 811 million are social media users
- Asia is home to more than 3 billion mobile phone subscriptions

MEDIA AND SOCIAL MEDIA – NEED FOR ENGAGEMENT

MEDIA

- A major loss involving large numbers of fatalities or a well-known operator can attract overwhelming public interest.
- Instant new flashes - online and conventional media
- Requests for information and explanations.
- How to respond is key and can affect your reputation, key relationships, and ongoing business.



MEDIA AND SOCIAL MEDIA – NEED FOR ENGAGEMENT

MEDIA

- Legitimate demands for information and transparency
- Achieving a balance between disclosure and co-operation and protecting the airline's position on liability
- Engagement a necessity:
  - Public commitment to transparency
  - Frequent press releases, briefings and updates
  - Keep asking journalists not to speculate
  - Engage proactively

- **General public** - using social media to criticise the airline
- **Social media sites** - are not monitored or vetted.
- **Employees** - posting potentially confidential information or making emotive / misleading statements
- **Accusing other companies / parties** - that may be at fault
- **Potentially commit criminal offences** - libel / defamation, contempt of court
- **Airline** - can be criticised for not responding when information is widely available on the internet
- **Social media** - can have tremendous commercial applications if managed correctly

MEDIA AND SOCIAL MEDIA - AVOID
MEDIA

- Names of passengers and/or crew members should not be released publicly until their legal next-of-kin have been notified
- How the investigation will be structured, and what it will focus on
- Finding key pieces of evidence
- The possibility of pilot error, or of error or wrongdoing by any other employee of the airline
- The possible cause/s of the accident



- Protection from whom:
  - Plaintiff lawyers
  - Media

- Where:
  - Accident site/Airport
  - Airline's Control Centre/Head Office
  - Hospitals
  - Hotels

- Liaison with air accident investigators
  - Provide full cooperation
  - Disclosure of original documents

- Liaison with any criminal investigation
  - Expect accident site to be designated as a crime scene
  - Incriminating statements
  - Appoint criminal lawyers to protect airlines and key staff

HANDLING A MAJOR LOSS - OFFICIAL AIR ACCIDENT INVESTIGATION (1)

ACCIDENT INVESTIGATORS

- Legal framework: Chicago Convention 1944 + ICAO Annex 13

- ICAO Annex 13 (Aircraft and Incident Investigation) provides the standards and recommended practices required by the Chicago Convention (article 37)

- “The State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall each be entitled to appoint an accredited representative to participate in the investigation.

  Note: Nothing in this standard is intended to preclude the State that designed or manufactured the powerplant or major components of the aircraft from requesting participation in the investigation of an accident.”
  (ICAO Annex 13, Chapter 5.18).

HANDLING A MAJOR LOSS - OFFICIAL AIR ACCIDENT INVESTIGATION (2)

ACCIDENT INVESTIGATORS

- “The sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents. It is not the purpose of this activity to apportion blame or liability” (ICAO Annex 13, Chapter 3.1)

BUT…

HANDLING A MAJOR LOSS - OFFICIAL AIR ACCIDENT INVESTIGATION (3)

ACCIDENT INVESTIGATORS

- While investigation reports may not explicitly apportion blame, the analysis and conclusions will often point in (a) particular direction(s)
- The Investigation Report is a road map for Claimants' lawyers
  - Provides expert guidance
  - Persuasive for judges in many jurisdictions
- When participating in accident investigations be aware:
  - Your reports/letters/other communication may be published and scrutinised by Claimants' lawyers and a court of law
  - Assist investigation fully but avoid speculation and focus on the facts

HANDLING A MAJOR LOSS - CRIMINAL INVESTIGATION

POLICE

- Often obligatory
- Increasing importance - not to be ignored!!!
- Political and social factors
- Impact on civil claims?



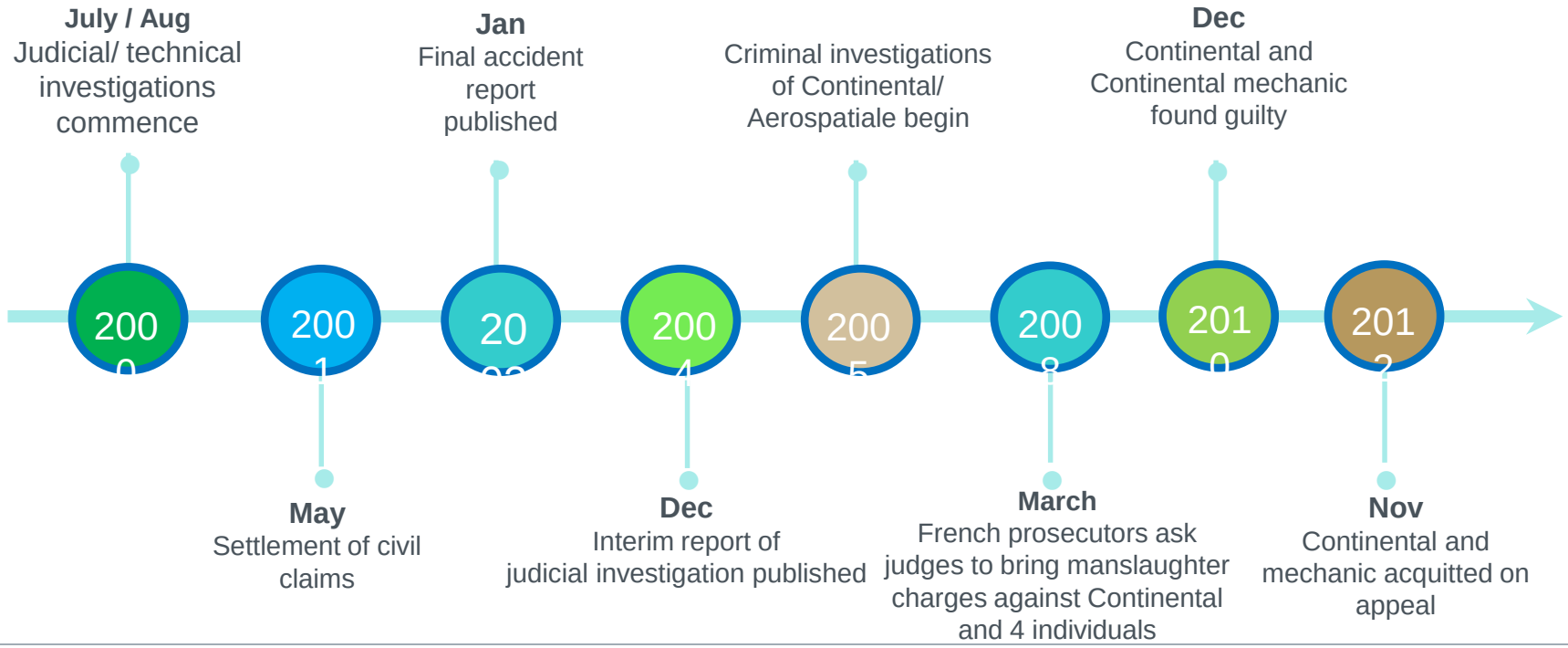
A Growing Trend ...

- **Default position** - following any major aviation disaster in some jurisdictions e.g. Brazil, France, Italy, Japan
- **Criminal exposures** - for companies, employees and senior personnel
  - Disbar from holding offices, business licence suspensions, fines, imprisonment
- **Investigations may arise** - where accident has links to particular jurisdiction, even though it happened elsewhere.
  - Flash Airlines, 2004, MH370, 2014
    - In France: expected due to presence of French victims and French made aircraft, charges can be brought against foreign companies, and senior and junior employees
- **Conflict** - with accident investigators
  - Aims – to identify fault

CONCORDE - A LONG AND PAINFUL PROCESS….

POLICE

The criminal investigation and prosecution process takes years



IMPACT ON CIVIL CLAIMS
PLAINTIFF'S LAWYERS

- In many countries it is the practice that:
  - accident investigators have a legal obligation to report evidence of criminal activity to the prosecuting authorities
  - accident investigation report is admissible in evidence in criminal proceedings
- Potential plaintiffs
  - Tactical Advantage
    - Plaintiff Bar assisting prosecutors – PR pressure ("may be a case to attract high awards")
    - Particularly attractive in jurisdictions where punitive damages exist
  - Substantive Advantage
    - Allegations and evidence can be of huge assistance
    - Criminal acts. Higher standard of proof. If convicted difficult to be exonerated in civil proceedings.
- Interference with Defendants (airlines, others) lawyers

OTHER EXPOSURES FOR THE AIRLINE AND ITS INSURERS

- Risks of criminal liability need to be managed properly
  - not just for front line operational staff
  - but senior managers and the Board of Directors
  - The risks increase if systemic failures (e.g. in management/quality/training)
- Just safety culture and confidential reporting
  - Except in Denmark little protection from disclosure of behaviour
  - Early engagement of lawyers essential
- Legal representation
  - Divided thoughts on separate representation. Importantly there should be coordination.
- Assistance from Insurers – policy wordings vary
  - Cost of investigations
  - Defence costs
  - Exclusions: fines etc against public policy

SPECIALIST PLAINTIFFS' LAWYERS – OUR RECENT EXPERIENCES

PLAINTIFF'S LAWYERS

- Not just US law firms
- Aggressive targeting of victims and relatives after an accident
- Litigation conducted on a group basis
- Looking for best jurisdiction
- Looking for deepest pockets

PASSENGER CLAIMS: POTENTIAL JURISDICTIONS AGAINST OPERATOR

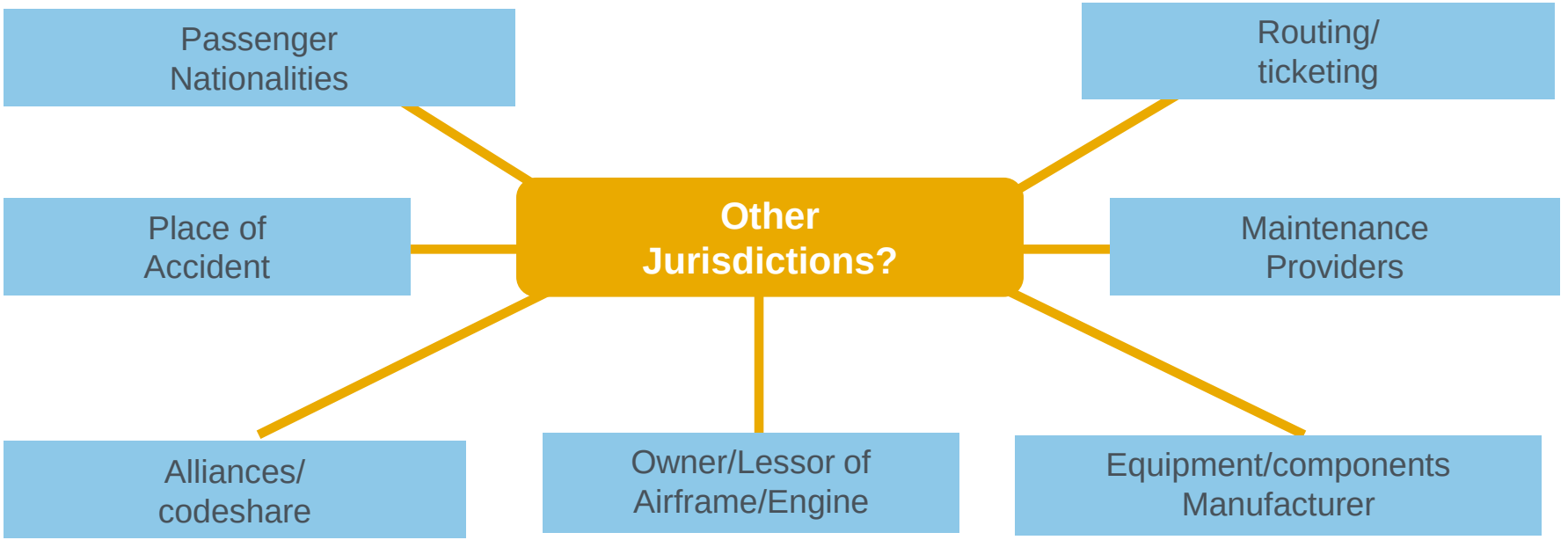
PLAINTIFF'S LAWYERS

- Domicile of Carrier
- Principal place of business of carrier
- Place where contract of carriage was made
- Place of destination
- Place of passenger's principal or permanent residence (so long as carrier (or code share partner) operates services there and conducts its air carriage business there)



JURISDICTION ISSUES

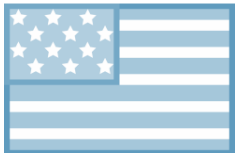
PLAINTIFF'S LAWYERS



NB. FORUM SHOPPING BY CLAIMANT?

Forum Shopping by Claimant Lawyers

	US	Common Law	Civil Law
Contingency fees	Yes	No	No
Discovery/Disclosure	Onerous	Extensive	Limited
Compensatory Damages	High	Fair	Fair
Punitive Damages	Yes	No	No
Juries	Yes	No	No
Process	Accusatorial	Accusatorial	Inquisitorial



- **USA** – Traditionally very high awards



- **Europe** – Following US trend but still significantly lower
- NB – Mid-Atlantic trend for settlements which are higher than European but lower than US



- **Asia** – generally lower than Europe/US but gap narrowing in certain jurisdictions

FURTHER ASSESSMENT OF EXPOSURES

- Can an airline ignore cross-border litigation against other parties?
  - Risk of Cross Claims
  - Tort/Common Law based
  - Contractual Indemnities
  - Limitation



FURTHER ISSUES

- Agreed Dispute Resolution Procedures - Mediation
- Funding agreements - provisional apportionment
- Sharing Agreements
- Full and Final Releases

SPECIFIC ISSUES

Hull claims	• Collection of the agreed hull value • Release
Baggage claims	• Cleaning and returning of baggage
Cargo claims	• Usually presented by the subrogated insurer • Liability regime • Dangerous/valuable cargo – Protect on site and after removal
Third party claims	• Damage to property or death of people on the ground • Ocean clean-up costs • Surface Damage Convention

Be prepared

Be practical

Be flexible

Be reasonable

KEEP CALM AND CARRY ON!!!



CASE STUDY – ASIANA AIRLINES FLIGHT OZ-214



BACKGROUND: -

- Boeing 777-200ER operating ICN-SFO
- 291 passengers, 16 crew on board
- 9 nationalities, including 141 Chinese citizens
- Passengers included 70 Chinese students and teachers, en route to summer camp in the U.S. (from 3 schools)
- Aircraft struck runway sea wall on landing at SFO, ripping the aircraft's tail and propelling passengers seated in back of the plane onto the runway
- Local time: 11:27am (03:27 in Korea)
- 3 fatalities, 182 injured
- First fatal accident involving a large jet transport in the U.S. since American 587 (Nov. 2001)

CASE STUDY – ASIANA AIRLINES FLIGHT OZ-214





CASE STUDY – ASIANA AIRLINES FLIGHT OZ-214

ISSUES / CHALLENGES: -

1. ‘Perfect storm’ occurred on US soil, which was early hours Korean time at the weekend.
2. Importance of Disaster Response Plan and working with partner carrier for that region – i.e. United Airlines – sharing resources – Agreement(s) re local assistance/Star Alliance. Dealing with costs sharing?
3. Family Assistance requirements in US – timely response crucial, hotline for family members, advance payment obligations, local support team, accommodation for family members, security – DoT fine - adverse media attention.
4. Dealing with immediate arrangements with hotels, security for staff, preventing opportunism by Plaintiff lawyers.
5. Dealing with NTSB + Police.
6. Media – Point of contact and press statements.
7. NTSB cooperation – avoid being criticised and/or fines.
8. Plaintiff lawyers – moratorium – retaining large groups of passenger clients.
9. Accident Investigation – Ensure that you have input in final draft, accident investigators can be politically driven.
10. Dealing with City of SFO – Girl killed by fire truck.

ISSUES / CHALLENGES: -

11. Dealing with volume of injured passengers and funeral arrangements for deceased passengers.
12. Third party crew member were contracted – not ‘employees’ – therefore deemed as passengers for insurance purposes.
13. How to deal with flight crew claims? Crew – Limited cover – tactics – fees?
14. Dealing with Boeing.
15. Fraudulent claims – Groups of passengers receiving medical treatment ‘en masse’ unrelated to the accident! Millions of US$!
16. Passengers of other Airlines claiming against Asiana for delay, cancellation.
17. Mental injury only – How to deal with walkaway passengers, with no signs of obvious bodily injury? Plaintiff counsel becoming more creative – brain lesions / traumatic brain injuries / internal bruising.

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