

When the Smoke Clears: The Role of Aviation Defense Lawyers After an Airline Accident

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Introduction: The First Hours

The call comes minutes after the accident occurs.

In the operations centers of major airlines, in the war rooms of airframe manufacturers, in the offices of insurers who have spent years pricing the risk of exactly this moment, the machinery of legal response begins to move within minutes of a major aviation accident.

Before the names of the victims are confirmed, before the cause is known, before the first NTSB investigator boards a government aircraft headed for the scene — the lawyers are already working.

This is not callousness. It is the recognition, hard-won through decades of catastrophic litigation, that in aviation disasters the legal consequences are enormous, the evidentiary record is perishable, and the gap between a well-managed legal response and a chaotic one can be measured in hundreds of millions of dollars and in the institutional survival of the companies involved. Aviation law after an accident is not a quiet specialty practiced in the margins of the legal system. It is a high-stakes, multidisciplinary practice that draws on federal regulatory law, international treaty, tort doctrine, insurance, criminal procedure, and the forensic sciences — all at once, all under conditions of intense public scrutiny, and all on a clock that begins running the moment metal strikes earth.

This article examines the role of aviation lawyers in the aftermath of a commercial airline accident from the first hours through the resolution of litigation that may stretch across a decade.

It addresses the work of counsel, the regulatory framework within which all of them operate, the strategic and ethical tensions that affect the practice, and the ways in which aviation disaster litigation has shaped — and been shaped by — the broader development of American tort law.

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The Legal Framework: A Layered Architecture

Before examining what aviation lawyers do, it is necessary to understand the legal architecture within which they do it. Aviation disaster law does not fit neatly into any single doctrinal category. It is, instead, a layered system in which federal statute, international treaty, common law tort doctrine, and regulatory frameworks interact in ways that are often surprising and sometimes contradictory.

The Warsaw System and Montreal Convention

International aviation law begins with the Warsaw Convention of 1929, a treaty designed to promote the nascent commercial aviation industry by capping the liability of carriers for death and injury to passengers.¹ Warsaw reflected a political judgment that air travel, being new and uncertain, needed protection from the potentially ruinous consequences of catastrophic accidents. The price of that protection was a streamlined liability regime: carriers were presumptively liable for passenger death or injury occurring on board or during embarkation and disembarkation, but that liability was capped at figures that would become, over decades, grossly inadequate.²

The Warsaw system was modified over time through successive amendments and agreements — the Hague Protocol of 1955, the Guatemala City Protocol of 1971, the Montreal Agreement of 1966 — each adjusting the liability caps and the standards for breaking them. But the system's fundamental architecture remained intact: international air travel would be governed by treaty, not by the domestic tort law of any particular nation, and liability would be channeled through the carrier rather than dispersed among manufacturers and other defendants.³

The Montreal Convention of 1999, which entered into force in 2003 and now governs most international aviation accidents involving carriers from its 140 signatory nations, significantly modernized the regime.⁴ Montreal establishes a two-tier liability system. For claims up to 151,880 Special Drawing Rights — approximately \$205,000 as of October 2026 — the carrier is strictly liable with no fault defense available.⁵ Above that threshold, the carrier may escape liability by proving that the damage was not due to negligence or wrongful act, or that it was solely due to the negligence of a third party. Montreal also substantially expanded the range of courts in which plaintiffs may sue, adding the 'fifth jurisdiction' of the passenger's principal and permanent residence, which has proven enormously significant for plaintiffs seeking to bring claims in U.S. courts.

For aviation lawyers, the threshold question in any international accident is whether Montreal applies, and if so, how its provisions interact with domestic law on matters the Convention does not address — the measure of damages, procedural rules, choice of law. These are not abstract questions. The difference between litigating an international aviation death claim under Montreal in a U.S. court and litigating the same claim under the domestic law of a foreign nation can be measured in millions of dollars.

The Death on the High Seas Act

When an aviation accident occurs more than three nautical miles from the shore of the United States — as with the crash of TWA Flight 800 in 1996 and numerous other tragedies over open ocean — the Death on the High Seas Act of 1920 (DOHSA) may apply.⁶ DOHSA, enacted a century ago to address maritime deaths, limits recoverable damages to pecuniary losses: lost wages, loss of support, loss of services. It does not permit recovery for loss of society, grief, or other non-economic damages.

Congress amended DOHSA in 2000, following the TWA 800 litigation, to permit recovery of non-economic damages — specifically, loss of ‘care, comfort, and companionship’ — in commercial aviation accidents occurring more than 12 nautical miles from shore.⁷ The amendment was made retroactive to July 16, 1996, the day before TWA 800 crashed off Long Island. But the amendment applies only to commercial aviation, leaving DOHSA’s original pecuniary limitation in place for general aviation accidents over the high seas and for non-aviation maritime deaths. For those whose family members die in covered accidents, the difference between DOHSA’s pecuniary limitation and the full compensatory damages available under state tort law can be significant — the practical impact has been estimated as the difference between a \$500,000 recovery and a \$2–3 million one in comparable cases.⁸

Federal Preemption and the Airline Deregulation Act

The Airline Deregulation Act of 1978 preempts state laws relating to the ‘price, route, or service’ of an air carrier. The scope of this preemption has been extensively litigated, with courts wrestling over whether various state tort claims fall within or outside the preempted zone. In general, safety claims arising from the actual operation of the aircraft have survived preemption challenges, while claims touching on ticket pricing, baggage handling policies, and similar commercial practices have fared less well.

Federal Aviation Regulations also play a significant role in aviation litigation, both as a floor establishing the minimum standard of care and as evidence of the standard of care that a jury may consider. Compliance with FAA regulations does not necessarily insulate a defendant from liability — a carrier may comply with minimum regulatory requirements while still failing to meet the common law standard of care — but systematic violation of regulations is powerful evidence of negligence.

Products Liability: The Manufacturer’s World

When an accident involves alleged defects in the aircraft, its engines, its avionics, or any of the thousands of components that constitute a modern commercial jet, products liability law comes into play alongside the regulatory framework. Aviation products liability is governed primarily by state law, subject to federal preemption arguments that manufacturers frequently raise when FAA certification decisions are involved.

The preemption argument in aviation products liability — that FAA certification of a design or component precludes state tort claims challenging that design — has had a complicated history in the courts. The tension remains active, and aviation manufacturers continue to press preemption arguments in many products cases, with results that vary by circuit and by the specific nature of the claim.

The General Aviation Revitalization Act

For general aviation accidents — those involving smaller aircraft not operated by commercial carriers — the General Aviation Revitalization Act of 1994 (GARA) imposes an eighteen-year statute of repose on claims against aircraft and component manufacturers.⁹ Once a general aviation aircraft or component has been in service for eighteen years, the manufacturer is generally immune from products liability claims arising from accidents involving that aircraft or component. GARA was enacted in response to a near-collapse of the general aviation manufacturing industry: U.S. production of general aviation aircraft fell from approximately 17,800 units in 1978 to just 929 units in 1994, a decline industry representatives attributed substantially to long-tail products liability costs.¹⁰

GARA's immunity is not absolute. Exceptions exist for cases in which the manufacturer knowingly misrepresented or withheld safety information from the FAA, for accidents injuring persons not aboard the aircraft, for emergency medical flight passengers, and for claims arising under a written warranty. The 18-year period runs from initial delivery and rolls forward upon installation of new components or parts, meaning that modifications and replacements can restart the clock for the affected components.¹¹

The interplay of these various legal regimes — Montreal, DOHSA, state tort law, federal preemption, GARA — means that aviation disaster law is never a simple application of settled principles. Every accident presents its own choice-of-law puzzle, and the defense lawyer who practices in this space must be knowledgeable in all of these frameworks simultaneously.

The First 72 Hours: Immediate Legal Response

The legal response to a major aviation accident begins in the immediate aftermath of the crash, and the decisions made in the first 72 hours can shape the litigation for years. Defense counsel faces urgent tasks that cannot be deferred, and the tension between those simultaneous, competing legal mobilizations defines the opening phase of an aviation disaster response and related litigation.

The Airline's Response Team

All airlines maintain standing crisis response protocols that are activated immediately upon confirmed notification of a serious accident. These protocols involve, among others, operations personnel, public affairs, customer relations, and — always — legal counsel. In-house aviation counsel at a major carrier will typically be on the phone with outside defense counsel within minutes of a confirmed accident.

The immediate legal priorities for the airline are several. First, document preservation: a litigation hold must be issued immediately covering all communications, operational records, maintenance logs, training records, scheduling data, and any other materials that might be relevant to the accident. In the age of electronic communications, the volume of potentially relevant data is staggering, and the failure to preserve might be spoliation.

Second, the airline must begin the process of engaging with the NTSB investigation, which will begin almost immediately. The airline will be a party to the investigation, and its representatives will be deployed to the accident site.

Third, counsel will focus on the passenger manifest. The names and places of residence of the victims determine the applicable legal regime for each wrongful death claim. A flight carrying passengers from a dozen different countries may give rise to claims governed by a dozen different legal frameworks, and identifying those frameworks early is essential to evaluating liability exposure.

Family Assistance Act Obligations

The Aviation Disaster Family Assistance Act of 1996 imposes specific obligations on airlines following accidents involving significant loss of life.¹² Codified at 49 U.S.C. §§ 1136 and 41113, the Act requires the carrier to designate a coordinator for activities with the families of passengers, to provide a list of passengers to the NTSB within three hours of the accident (to the extent practicable), to notify families of the accident's circumstances, to arrange for mental health and counseling services, and to establish a toll-free telephone number for families.

The Act also restricts the airline and its representatives from making unsolicited contact with the family of a passenger for thirty days following the accident for purposes of offering financial assistance or discussing litigation.¹³ Subsequent amendments, enacted as part of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century in 2000, extended this restriction to 45 days and expanded its scope to include foreign air carriers operating flights to and from the United States. The Foreign Air Carrier Family Support Act of 1997 had already imposed similar obligations on foreign carriers following issues revealed by the Korean Air Flight 801 crash in Guam that year.¹⁴

Compliance with the Family Assistance Act is both a legal obligation and a strategic consideration. Airlines that handle family assistance well — that communicate with compassion, that provide information promptly, that demonstrate genuine institutional concern for the victims — tend to fare better in the subsequent litigation than those that appear defensive, evasive, or primarily concerned with liability management.

Plaintiff's Counsel: The Race to the Courthouse

On the other side of the airline response, plaintiff's aviation lawyers are often retained within hours of a major accident. Family members of victims, in shock and grief, nonetheless find themselves contacted by aviation attorneys within the first day — sometimes within hours. This contact, while it may seem unseemly, and is a violation of The Aviation Disaster Family Assistance Act, reflects the reality that plaintiff's aviation lawyers monitor accident news closely and understand that early retention provides maximum time to investigate the accident before the evidentiary record is frozen.

The ethics of this early solicitation are also governed by the Model Rules of Professional Conduct and their state equivalents, which restrict in-person solicitation of prospective clients when a significant motive is pecuniary gain and when the prospective client is in a vulnerable state. Reputable aviation plaintiff's firms tend to be careful about how they make initial contact, relying on referrals from prior clients, relationships with grief counselors and victim advocacy organizations, and the natural flow of inquiries from family members who are themselves seeking representation.

Once retained, plaintiff's counsel faces a set of immediate priorities that mirror, in inverse, those of defense counsel. The plaintiff's lawyer wants to preserve evidence independently of the NTSB process, identify all potential defendants, and begin developing a theory of the case. That theory will be refined over months or years as the facts develop, but its early contours matter because they shape what evidence is preserved and what experts are retained.

The NTSB Investigation: Working the Process

The National Transportation Safety Board occupies a singular position in the aviation disaster legal landscape. It is not a court. It does not determine liability. Its findings are explicitly excluded from use in civil litigation. And yet it is the most important single proceeding in the post-accident legal universe, because it produces the factual record upon which all subsequent litigation is built.

The Statutory Bar and Its Limits

The relationship between an NTSB investigation and subsequent civil litigation is governed primarily by 49 U.S.C. § 1154(b), which provides that no part of an NTSB report relating to an accident may be admitted into evidence or used in any suit or action for damages arising from the accident.¹⁵ This provision reflects a considered congressional judgment: if parties know that candid cooperation with the NTSB will be weaponized against them in court, they may cooperate less candidly. The safety mission depends on a certain degree of separation from evidentiary use.



The scope of that separation is, however, narrower than it first appears, and litigators spend considerable energy working its edges. Courts have interpreted the statute to bar the NTSB's formal accident report and its probable cause finding — but generally not the underlying factual data, including the NTSB Group Chairman Factual Reports, gathered by individual investigators, which the NTSB's own regulations categorize separately.¹⁶ Photographs taken at the wreckage site. Air traffic control recordings. Flight data recorder readouts. Cockpit voice recorder transcripts. Maintenance logs. These materials, when obtained through discovery from the parties that produced or possess them, are generally fair game in civil proceedings, even if the NTSB's characterization of what they mean is not.

Critically, NTSB employees and investigators are barred by regulation from serving as expert or opinion witnesses in civil litigation arising from accidents they investigated, and may only testify as to facts personally observed.¹⁷ This prohibition ensures that the NTSB's conclusions cannot become evidence through the back door of government-employee testimony. It also means that the litigating parties must develop their own independent expert analyses of the same underlying data — analyses that may, and often do, reach different conclusions than the Board.

Party Status and the Lawyer's Role

Under NTSB regulations, entities whose employees, products, or operations are directly involved in an accident may petition to participate as 'parties' to the investigation. The airline, the airframe manufacturer, the engine manufacturer, the FAA, the air traffic control facility — these organizations are virtually always accorded party status, and their technical representatives are permitted to participate in field investigations, witness interviews, and technical working group sessions.

This participation is not a right in the traditional sense. The NTSB controls access, sets the agenda, and can limit or revoke party status if it determines that a participant is impeding the investigation rather than contributing to it. The investigator-in-charge, not opposing counsel and not a judge, holds authority over the process. Lawyers who show up to represent a witness, which is permitted, during an interview expecting to conduct a cross-examination or to pursue discovery-style questioning will find the experience disorienting.

Witness Preparation and the Sunshine Hearing

For major disasters, the NTSB may convene a public factual hearing at which witnesses testify under oath, under examination by Board staff and Board members, in a proceeding that is recorded and open to the public. This is not a trial. There is no cross-examination by adverse parties. Party spokespersons may ask questions of witnesses, but the Board controls the proceedings.

From a litigation standpoint, the factual hearing presents a strategic dilemma of considerable complexity. Witnesses who testify before the NTSB are giving sworn testimony that will be transcribed and made publicly available. Civil plaintiffs and their lawyers will read every word. A pilot who testifies that he followed standard operating procedures, only to have the flight data recorder show otherwise, has created an impeachment problem that may haunt him at trial. An airline maintenance supervisor who characterizes a recurring mechanical discrepancy as 'within acceptable parameters' has potentially handed plaintiffs a narrative about institutional indifference.

The lawyer's role in preparing and representing a witness for an NTSB hearing is therefore both technically and strategically irreplaceable. Witnesses must understand the factual record thoroughly enough to testify accurately — there is no room, and no benefit, in ducking around documented data — but they must also understand that accuracy and completeness are not the same as volunteering characterizations that go beyond what the evidence shows. This is witness preparation, not witness coaching, and the distinction matters as much ethically as it does practically.

The Defendants: Identifying the Cast

One of the most important early tasks for aviation defense lawyers is identifying the full universe of potentially responsible parties. Aviation accidents rarely have a single cause, and the legal doctrine of comparative fault — available in most jurisdictions — means that responsibility can be apportioned among multiple defendants. Identifying all potential defendants early is critical for the defense, which must assess exposure and coordinate strategy across what may involve several co-defendants.

The Airline

The airline is almost always the primary defendant in commercial aviation litigation. Under both the Montreal Convention (for international flights) and state or federal common law (for domestic flights), the carrier owes passengers the highest duty of care applicable at law and is liable for negligence in the operation of the aircraft, the conduct of its crew, the maintenance of its equipment, and the adequacy of its training programs.

Negligence theories against the carrier typically focus on crew error — failure to follow standard operating procedures, failure to respond appropriately to emergency conditions, inadequate crew resource management — and/or on institutional failures: inadequate training programs, deficient maintenance cultures, pressure on crews to meet schedule at the expense of safety. The latter theories are particularly powerful because they shift the case from individual human error, which jurors can understand and sometimes forgive, to systemic institutional failures.

The Manufacturer

Airframe and component manufacturers are frequent defendants in aviation litigation, particularly when the accident involves alleged mechanical failure. The threshold question in any manufacturer-defendant case is whether the accident was caused by a design defect, a manufacturing defect, or a failure to warn — and whether any of those defects were the proximate cause of the crash.

Aircraft manufacturer litigation is among the most technically complex in all of tort law. The discovery process in a case involving an alleged design defect in a commercial jet aircraft can involve millions of documents spanning decades of design history, testing records, certification submissions, and service history. The experts who testify in these cases — aeronautical engineers, human factors specialists, systems experts, failure analysis specialists — are among the most credentialed and expensive in any field of litigation. And the stakes are correspondingly enormous: a finding that a systemic design defect contributed to a crash can expose a manufacturer to liability across its entire fleet, not merely the individual aircraft involved.

The Government

The Federal Aviation Administration is a frequent target of scrutiny in aviation accident litigation, but the government occupies a privileged position that makes it difficult to name as a defendant. Under the Federal Tort Claims Act (FTCA), the United States may be sued for the negligent acts of its employees acting within the scope of their employment, but the discretionary function exception bars claims arising from governmental acts involving the exercise of policy judgment or choice.

Aviation FTCA cases most commonly arise from alleged negligence by air traffic controllers — failures to provide traffic separation, errors in sequencing or routing, inadequate advisories about weather or terrain. These operational decisions,

as opposed to policy-level judgments, fall outside the discretionary function exception and thus give rise to cognizable FTCA claims. But the practical aspects associated with suing the government — the FTCA's administrative exhaustion requirement, its venue limitations, its prohibition on jury trials — mean that suing the United States requires expertise in the FTCA.

Maintenance Providers and Ground Handlers

Major airlines contract out significant portions of their maintenance operations to third-party maintenance, repair, and overhaul (MRO) providers. When an accident involves alleged maintenance failures — improperly performed repairs, missed inspection items, inadequate documentation — the MRO provider may be a co-defendant alongside the airline. The contractual relationships between airlines and MRO providers, including indemnification provisions and insurance requirements, become critically important in the litigation that follows.

Ground handling contractors — companies that perform fueling, baggage handling, pushback, and other ramp services — similarly may be implicated in accidents involving events on the ground or during pushback and taxi. The proliferation of subcontracting in the aviation industry means that the chain of potential defendants in a major accident can be long, and the task of tracing responsibility through layers of contract relationships falls largely to the lawyers.

Jurisdiction and Venue: The Forum Wars

In aviation disaster litigation, the choice of forum is often as consequential as the merits of the case. Different courts apply different substantive law, different damages rules, different procedural regimes, and different jury pools — all of which can affect the outcome of litigation by orders of magnitude. The competition to secure a favorable forum can be one of the most fiercely contested aspects of aviation litigation strategy.

The Plaintiff's Perspective

Most lawyers approach forum selection with a well-developed set of preferences. State courts with jury pools likely to return substantial damage awards are typically the preferred destination.

For international accidents, the Montreal Convention's fifth jurisdiction provision — which allows suit in the country of the passenger's principal and permanent residence — has been transformative. Before the Montreal Convention entered into force, U.S. residents who died on international flights were often limited to suing in the courts of the carrier's domicile or the country of destination, with dramatically different results than American courts would produce. The fifth jurisdiction brings those cases home, and U.S.-based lawyers have used it aggressively.

Forum Non Conveniens: The Defense Counterattack

One weapon defense counsel use to displace an unfavorable forum is the doctrine of forum non conveniens — the discretionary power of a court to dismiss a case in favor of a more convenient alternative forum. In aviation disaster cases involving international accidents and foreign plaintiffs, defendants frequently seek dismissal in favor of courts in the plaintiffs' home countries, where damages awards may be dramatically lower and where the procedural and evidentiary protections available to plaintiffs are more limited.

Forum non conveniens litigation in aviation cases can itself consume years. The plaintiff argues that the U.S. court is the appropriate forum — that key evidence is here, that key witnesses are here, that the defendants are here. The defense

argues the opposite. Courts must balance private interest factors (access to evidence, witness availability) against public interest factors (court congestion, familiarity with applicable law).

The strategic calculus on forum non conveniens has evolved over decades of litigation. Defense counsel who successfully obtain dismissal on forum grounds must still condition that dismissal on a willingness to submit to jurisdiction in the alternative forum — a condition that courts impose routinely. The economic difference between litigating a wrongful death claim in a U.S. federal court and litigating the same claim in the courts of a foreign country may be sufficient to effectively extinguish a claim that would otherwise generate substantial recovery.

Multidistrict Litigation

When a major aviation accident generates significant numbers of lawsuits in multiple federal district courts, the cases are typically consolidated in a single district court under the multidistrict litigation (MDL) statute, 28 U.S.C. § 1407. MDL consolidation is designed to avoid duplication of discovery, prevent inconsistent rulings on common legal questions, and facilitate efficient resolution of large volumes of related cases.

Aviation MDL proceedings are administered by a transferee judge who manages the consolidated litigation from initial case management through discovery, expert disclosure, summary judgment, and either global settlement or remand to individual transferee districts for trial. Aviation defense lawyers develop specialized expertise in this process — knowledge of which transferee judges have been assigned aviation dockets, familiarity with the mechanics of discovery in multi-party proceedings, and relationships with the small cadre of aviation experts who appear repeatedly in these cases across the country.

The Art of Damages: Valuing Loss

The valuation of damages in litigation arising from aviation accidents is an art that combines economic modeling, actuarial science, and advocacy in proportions that vary with the nature of the case and the composition of the jury. The fundamental tension is between the law's desire for precision — damages must be quantifiable, supported by evidence, rooted in documented loss — and the human reality that the loss of a person's life resists an easy translation into monetary terms.

Economic Damages

The core of economic damages in wrongful death litigation is generally the present value of the decedent's future lost earnings, reduced to present value and adjusted for taxes, personal consumption (what the decedent would have spent on herself rather than her family), and the probability of continued employment. These calculations require the services of a forensic economist, typically a Ph.D., who can walk a jury through the methodology with sufficient clarity to generate confidence without generating confusion.

For high-income decedents — executives, physicians, attorneys, financial professionals — the economic damages can be significant. A 45-year-old partner at a major law firm or investment bank, with twenty years of peak earnings remaining, may have an economic damages case worth several million dollars on the lost earnings component alone.

Lost services — the household services that the decedent would have provided — are separately compensable in most jurisdictions and are particularly significant in cases involving decedents who were primary homemakers or who provided substantial childcare. The economic literature on the value of household services has become increasingly sophisticated, and plaintiff's economists now routinely present detailed valuation of these contributions.



Non-Economic Damages

Non-economic damages — loss of consortium, loss of companionship, grief and mental anguish — are available in most states and can dwarf economic damages in many cases. They are also the most contested category, because they are by nature unquantifiable and because they are the subject of tort reform legislation in a number of states that imposes limitations on their availability.

In aviation litigation, non-economic damages are typically presented through the testimony of family members — a widow describing the relationship she had with her husband, a child describing what it means to grow up without a parent — supported by whatever documentary evidence illuminates the nature of the relationship. Photographs, videos, letters, testimony about shared experiences: these are the materials from which plaintiff's lawyers build the emotional architecture of a wrongful death case.

Defense counsel's challenge with non-economic damages is to avoid appearing callous while still contesting the quantum. A defense that looks like it is minimizing a family's grief will lose a jury even if it wins on liability. The skilled defense lawyer concedes the loss — acknowledges it as real, profound, and permanent — while arguing that the legal standard requires first a finding of liability, and then, and only then, proportionality and rationality in the award.

Punitive Damages

Punitive damages in aviation disaster litigation are relatively rare. Recovery of these requires proof not merely of negligence but of conduct so egregious that the law calls for punishment beyond compensatory remedy — typically actual malice, reckless disregard for the safety of others, or conscious indifference to a known risk. The standard is demanding, and most aviation cases, even those involving serious institutional failures, do not and cannot meet it.

But if they do, the consequences are significant. Cases involving evidence that a manufacturer knew of a dangerous condition and chose not to address it — internal memoranda documenting safety concerns that were overridden by economic considerations, evidence of deliberate falsification of maintenance records, proof of systemic disregard for regulatory requirements — can give rise to punitive claims that dwarf the compensatory award.

The Discovery Process: Building the Factual Record

Discovery in major aviation disaster litigation is a massive undertaking. A case involving a large commercial jet aircraft, multiple potential defendants, and dozens or hundreds of plaintiffs will generate document productions measured in millions of pages, deposition testimony from dozens of witnesses, and expert disclosure from specialists across multiple technical disciplines. Managing this process — for both plaintiffs and defendants — requires organizational capabilities that exceed those of ordinary civil litigation.

Documentary Discovery

The first stage of discovery is documentary, and it is vast. From the airline: the complete maintenance history of the aircraft, crew training records, crew scheduling data, dispatch records, internal communications about safety concerns, quality assurance audits, FAA inspection records, prior incident reports. From the manufacturer: design history documents, certification submissions, testing records, service difficulty reports, internal engineering communications, previous accident investigations involving the same aircraft type. From the government: FAA surveillance records, enforcement actions, safety inspections, communications with the carrier and manufacturer about known issues.



The challenge is not merely obtaining these documents but processing them. Modern discovery in major litigation is almost entirely electronic, and document productions in aviation cases routinely involve millions of pages of material that must be reviewed, coded, analyzed, and organized for use in depositions and at trial. The e-discovery infrastructure required to manage this process — the litigation support vendors, the review platforms, the project managers — represents a significant cost center in major aviation litigation.

Expert Witnesses: The Technical Core

Aviation litigation is expert-intensive. The causation question in most aviation accidents is inherently technical, and the jury's ability to evaluate it depends entirely on the credibility and clarity of expert testimony. The selection, preparation, and presentation of expert witnesses is among the most important strategic decisions in aviation disaster litigation.

The core expert in most aviation cases is an accident reconstruction specialist — typically a retired airline captain, a former NTSB investigator, or an aeronautical engineer with specific expertise in the aircraft type and accident category involved. This expert analyzes the flight data recorder parameters, the cockpit voice recorder, the radar track, the maintenance records, the autopsy results, and whatever physical evidence is available from the wreckage, and renders opinions about what happened and why.

Supporting the reconstruction expert is a constellation of specialists: human factors experts who analyze crew decision-making; meteorological experts who establish the weather conditions at the time of the accident; structures specialists who analyze the failure mode of aircraft components; performance engineers who model the aircraft's trajectory through its final moments; medical examiners and pathologists who establish causes of death and survival factors. In cases involving allegations of crew error, the airline's training programs and crew qualification standards will be evaluated by training experts. In cases involving allegations of ATC error, communications specialists will analyze the radar and radio records.

The competition between plaintiff's and defense experts is one of the defining features of aviation trial practice. Both sides will retain credentialed specialists who will analyze the same underlying data and reach different — sometimes dramatically different — conclusions. The jury's task is to decide which expert to believe, and that decision is made as much on the basis of demeanor, clarity, and apparent expertise as on the technical merits of the competing analyses. The ability to prepare an expert to testify clearly and persuasively to a lay jury is one of the most valued skills in aviation trial practice.

Settlement Dynamics in Aviation Cases

The majority of aviation disaster cases settle before trial. The reasons are structural: the costs of full trial preparation in a major aviation case are enormous, the uncertainty of jury verdicts is real, and both sides typically have powerful incentives to resolve cases efficiently. From the carrier's perspective, early settlement avoids the discovery process, as well as the publicity of a trial. From the plaintiff's perspective, settlement provides certainty of recovery and avoids the risks of an adverse verdict or a defense verdict followed by expensive appeal.

The Settlement Process

Aviation disaster settlements are typically negotiated through a combination of one-on-one discussions among counsel and/or mediation before a retired judge or experienced mediator.

The valuation of individual claims is driven by the economic damages analysis — the loss of the specific decedent's income stream, discounted to present value — modified by the non-economic damages applicable under the law of the relevant jurisdiction, and further adjusted by the relative strength of the liability evidence. In cases where liability is strongly established against the manufacturer or the carrier, individual settlements tend to cluster around the full economic damages value plus a substantial non-economic component. In cases where liability is contested, the discount applied to reflect litigation risk may be substantial.

Global vs. Individual Resolution

Major aviation disasters often involve a mix of plaintiffs, with very different damages profiles. A flight carrying both high earners and low earners will generate individual claims ranging across the economic spectrum. Coordinating a global settlement that resolves all of these claims — across multiple jurisdictions, multiple legal regimes, and multiple levels of economics — is among the most complex organizational challenges in aviation practice.

Plaintiff's firms and defense counsel in major aviation cases typically develop efficient settlement machinery over the course of large disasters. Claims protocols, neutral administrators, standardized valuation methodologies, and confidential claim-by-claim negotiation processes have all evolved as responses to the complexity of resolving aviation disaster litigation at scale.

Criminal Exposure and Parallel Investigations

In most aviation accidents, criminal liability is not a primary concern. Accidents attributable to pilot error, mechanical failure, or air traffic control shortcomings are addressed through the civil and regulatory systems, not the criminal law. But a subset of aviation disasters — those involving alleged willful violations of aviation regulations, alleged fraud in the certification or maintenance of aircraft, or circumstances involving operator recklessness — can give rise to criminal exposure that fundamentally changes the legal landscape.

When a criminal investigation runs concurrently with civil litigation and the NTSB investigation, lawyers representing individuals face the classic tension between cooperation with a regulatory inquiry and Fifth Amendment exposure in a criminal one. Employees who are potential subjects of criminal prosecution retain the right to decline to provide information to NTSB investigators, but invoking that right in the middle of an NTSB investigation carries its own institutional consequences, including possible loss of party status. Navigating this terrain requires exactly the kind of careful judgment and experience that resides with experienced aviation defense counsel.

The Trial: Aviation Disaster in the Courtroom

The cases that do not settle — and there are always some — go to trial in circumstances that test the advocacy skills of even the most experienced litigators. Aviation disaster trials are long, complex, document-intensive, and emotionally charged. They require lawyers who can translate dense technical material into terms that a lay jury can understand and evaluate, who can humanize both the victims and the defendants, and who can structure a presentation of facts spanning months or years of investigation into a coherent narrative that a jury can follow and remember.

Jury Selection

Voir dire in aviation cases typically focuses on attitudes toward aviation safety, corporate accountability, and damages. Plaintiff's counsel wants jurors who believe that large corporations should be held accountable for systemic safety failures and who are willing to return substantial damage awards. Defense counsel wants jurors who are skeptical of hindsight analysis, sympathetic to the difficulty of managing complex systems, and resistant to runaway damage awards.

The challenge for both sides is that aviation disasters generate enormous public attention and media coverage. Jurors who have been following coverage of a major accident may have formed opinions about fault before the trial begins, and identifying and removing them for cause — or using peremptory challenges strategically — is a critical component of jury selection strategy.

Opening Statement and the Narrative

Aviation trial lawyers understand that the opening statement is the most important advocacy moment in the trial. It is here that the jury's framework for evaluating the evidence is established, and the narrative architecture that counsel builds in opening will either survive or collapse as the evidence comes in.

Plaintiff's openings in aviation cases typically follow a structure that begins with the human cost — the lives that were lost, the families that were devastated — before moving to the story of how the accident happened and why the defendant is responsible. Defense openings counter by emphasizing complexity and context.

The Expert Battle

The technical heart of most aviation trials is the battle of the experts. Plaintiff's accident reconstruction expert will testify about what the data shows, what the crew did or failed to do, and what a properly trained crew would have done differently. A defense expert will offer a competing analysis, emphasizing different data points, different interpretations, and different causal chains.

The trial lawyer's job with his own expert is primarily one of translation. The expert knows the material; the lawyer's job is to help the expert present it in a way that the jury can follow, believe, and remember. With opposing experts, the lawyer's job is impeachment — exposing the analytical shortcuts, the unjustified assumptions, the areas of bias or prior inconsistency that undermine the expert's credibility. Cross-examination of a sophisticated aviation expert is one of the most demanding advocacy tasks in the courtroom, requiring the lawyer to be sufficiently fluent in the technical material to pursue a line of cross effectively without getting lost in the weeds.

Closing Argument

Closing argument in aviation cases is where the lawyers reclaim the case from the experts and the documents and return it to the human beings in the box. The evidence has been presented; the closing argument is the synthesis.

The most effective closing arguments in aviation cases are those that both address the technical evidence — demonstrating mastery of the material without getting lost in it — and return consistently to the human stakes. Juries decide aviation cases the same way they decide all cases: through a combination of logic and emotion, evidence and narrative, facts and story. The lawyer who masters both dimensions of that equation is the one most likely to prevail.

Conclusion

Aviation disaster law is a practice built on tragedy. Every case represents a catastrophic failure — of technology, or of human judgment, or of institutional process — and every client is someone who has lost something irreplaceable. The lawyers who practice in this space carry that weight, and the good ones carry it with both rigor and humanity.

The role of the aviation defense lawyer after an accident is simultaneously technical and human, legal and factual, strategic and ethical. It begins in the first hours after a crash, when evidence is perishable and decisions made in haste can shape outcomes years later. It continues through the grueling process of the NTSB investigation, the jurisdictional battles, the document discovery, the expert preparation, and the settlement negotiations or trial.

What makes aviation law distinctive is not its complexity, though it is certainly complex. It is the combination of that complexity with consequence. The stakes in aviation disaster litigation — for the clients, for the institutions, and for the safety of the traveling public — are as high as they come in the civil legal system. The defense lawyers who serve those stakes, who bring genuine expertise and genuine commitment to their work, are practicing law in one of its most demanding and most important forms.

The smoke clears. The investigation begins. The lawyers get to work. And the long, slow process of accounting for disaster — legal, financial, and ultimately moral — moves forward.

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Montreal Convention (Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309).

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Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (codified as amended in scattered sections of 49 U.S.C.).

Aviation Disaster Family Assistance Act of 1996, Pub. L. No. 104-264, §§ 701–705, 110 Stat. 3213 (codified at 49 U.S.C. §§ 1136, 41113).

Foreign Air Carrier Family Support Act of 1997, Pub. L. No. 105-148, 111 Stat. 2681 (codified at 49 U.S.C. § 41313).

General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552.

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Multidistrict Litigation Statute, 28 U.S.C. § 1407.

Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, 114 Stat. 61 (2000).
49 U.S.C. § 1154(b) (bar on admission of NTSB reports in civil litigation).

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Bosch Aircraft Corp. v. Rainey, 488 U.S. 153 (1988).

Stones v. Randle Flying Service, Inc., 579 F.2d 169 (9th Cir. 1978).

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Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986).

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ICAO, 2024 Revised Limits of Liability Under the Montreal Convention 1999 (Doc 9740), effective Dec. 28, 2024.

ICAO Press Release, International Air Travel Liability Limits Set to Increase (Oct. 18, 2024).

NTSB, Federal Family Assistance Legislation, <https://www.nts.gov/tda/Pages/fds-fa-aviation.aspx>.

49 U.S. Code § 1136 — Assistance to passengers involved in aircraft accidents, Legal Information Institute, Cornell Law School.

House Report 104-793, Aviation Disaster Family Assistance Act of 1996 (Sept. 16, 1996).

49 C.F.R. § 835 (NTSB regulations — definition of Board accident report and factual accident report).

49 C.F.R. § 835.3 (NTSB employees — limits on expert testimony).

14 C.F.R. § 13.227 (FAA employees — limits on expert testimony).

Endnotes

- 1 Convention for the Unification of Certain Rules Relating to International Transportation by Air, Oct. 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11 (Warsaw Convention). The Convention was signed by representatives of 31 nations in Warsaw on October 12, 1929, and entered into force on February 13, 1933. The United States became a party in 1934. See Congressional Treaty Document 106-45 (Montreal Convention), noting that the U.S. has been a party to the Warsaw Convention since 1934.
- 2 See Aviation Liability: Global Overview, Lexology (July 16, 2020) (noting that Warsaw had “two primary goals: to establish worldwide air laws for the diverse ruling out of international aviation accidents and to limit the liability of the air carrier in order to protect the then fledgling airline industry”). The original Warsaw liability cap was approximately \$8,300 per passenger, \$75 Treaty Provisions 106-45, *supra*.
- 3 The sequence of modifications to the Warsaw system includes: Hague Protocol (1955, doubling the per-passenger limit); Guatemala Convention (1961, extending liability to aerial surface); Guatemala City Protocol (1971); Montreal Protocols of 1975; and IATA Inter-carrier Agreements of 1966. See Air Carrier Liability Regimes: Compare and Contrast of Warsaw and Montreal Provisions, Boesch Law (Jan. 9, 2026).
- 4 Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999, S. Treaty Doc. No. 106-45, 2242 U.N.T.S. 309 (Montreal Convention). The Convention entered into force on November 4, 2003. As of 2024, 140 States are parties. See ICAO Press Release, International Air Travel Liability Limits Set to Increase (Oct. 18, 2024).
- 5 ICAO, 2024 Revised Limits of Liability Under the Montreal Convention 1999 (effective Dec. 28, 2024). The Article 21 threshold increased from 128,821 SDRs (effective 2019) to 151,880 SDRs, reflecting a 17.9 percent increase from the prior 2019 figure of 128,821 SDRs — the carrier is strictly liable with no fault defense available. Above that threshold, the carrier may escape liability by proving that the damage was not due to negligence or wrongful act, or that it was solely due to the negligence of a third party. Montreal also substantially expanded the range of courts in which plaintiffs may sue, adding the ‘fifth jurisdiction’ of the passenger’s principal and permanent residence, which has proven enormously significant for plaintiffs seeking to bring claims in U.S. courts.
- 6 Death on the High Seas Act of 1920, 46 U.S.C. §§ 30301–30308 (DOHSA). The statute was originally enacted to address maritime deaths and was subsequently interpreted to apply to aviation disasters occurring over international waters. See Wikipedia, Death on the High Seas Act (last updated Mar. 20, 2024).
- 7 Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. No. 106-181, § 404, 114 Stat. 61 (2000) (codified as amended at 46 U.S.C. § 30307). The amendment was signed by President Clinton on April 5, 2000, and applied retroactively to commercial aviation accidents occurring after July 16, 1996 — the day before TWA Flight 800 crashed off Long Island. See Pennsylvania, DOHSA: Mixed Maritime Law; The Death on the High Seas Act.
- 8 See Offshore Helicopter Accidents in the Gulf of Mexico, Lewis Kullman Sterbcow & Abramson (Apr. 10, 2026) (noting that “under DOHSA, a family might recover \$500,000 in economic damages when the same case under state law could result in \$3–5 million including non-economic damages”); see also The Dallas Passenger Protection Act, StreetsBlog (describing how DOHSA’s pecuniary limit caused ‘loss of children’ to appear ‘practically worthless in the eyes of the law’).
- 9 General Aviation Revitalization Act of 1994, Pub. L. No. 103-298, 108 Stat. 1552 (codified at 49 U.S.C. § 40101 note) (GARA). Signed by President Clinton on August 17, 1994. The statute imposes an 18-year statute of repose for civil actions against most manufacturers of general aviation aircraft (defined as those with fewer than 20 passenger

seats not engaged in scheduled air service). See Wikipedia, General Aviation Revitalization Act; Keinhofer, Aviation Revitalization Act, GARA.

- 10 U.S. general aviation aircraft production fell from approximately 17,811 units in 1978 to 929 units in 1994. See GlobalAir.com, GARA: The General Aviation Revitalization Act of 1994 (updated Nov. 18, 2024); Barton Willhelmer Katz Craig, It's Not a Cure-All (Sept. 15, 2020). NBAA President and CEO Ed Bolen called GARA a “tiny, three-page bill that sparked research, investment and jobs” and “an unqualified success.”
- 11 GARA, § 2(a). (18-year clock runs from “date of delivery of the aircraft to its first purchaser or lessee”). Id. § 2(d) (tolling clock for new components: immunity period begins upon installation of replacement or added part). Key exceptions: (1) manufacturer knowingly misrepresented or concealed safety information from the FAA; (2) victim was passenger on emergency medical flight; (3) injured party was not aboard the aircraft; (4) action brought under a written warranty. See Slack Davis Sanger, Understanding GARA (Sept. 11, 2025); Motley Rice, What Is the General Aviation Revitalization Act?
- 12 Aviation Disaster Family Assistance Act of 1996, Pub. L. No. 104-264, §§ 701–705, 110 Stat. 3213 (codified at 49 U.S.C. §§ 1136, 41113). The Act was enacted as part of the Federal Aviation Reauthorization Act of 1996. See NTSB, Federal Family Assistance Legislation, House Report 104-793 (Sept. 16, 1996).
- 13 49 U.S.C. § 1136(g). The original 30-day restriction was later extended to 45 days by the Wendell Ford Act, Pub. L. No. 106-181, § 401(a)(1) (2000). The restriction applies to attorneys, insurance companies, airline litigation representatives, and their agents. See 49 U.S.C. § 1136(g); LII, Cornell Law School.
- 14 Foreign Air Carrier Family Support Act of 1997, Pub. L. No. 105-148, 111 Stat. 2681 (codified at 49 U.S.C. § 41313). The Act was enacted in December 1997, four months after the Korean Air Flight 801 crash in Guam on August 6, 1997, which revealed that ADFAA's obligations did not extend to foreign carriers. See ABA Tort Trial & Insurance Practice Section, The Brief (2014), at 3 (citing H.R. Rep. No. 105-371).
- 15 49 U.S.C. § 1154(b) (No part of a report of the Board, related to an accident or an investigation of an accident, may be admitted into evidence or used in a civil action for damages resulting from a matter mentioned in the report). See also 49 C.F.R. § 835.2 (NTSB regulations implementing the statutory bar). The provision reflects the congressional judgment that candor in safety investigations requires protection from evidentiary use. See AOPA Pilot Protection Services, The Impact of NTSB Reports in Civil Litigation (July 1, 2017).
- 16 The D.C. Circuit held in *Chiron Corp. v. NTSB*, 198 F.3d 935 (D.C. Cir. 1999), that individual investigators' factual reports — as distinct from the Board's official accident report — are not barred by § 1154(b) because they are not ‘a report of the Board.’ NTSB regulations at 49 C.F.R. § 835.2 codify this distinction, defining the ‘Board's accident report’ as the report containing the Board's determination, and the ‘factual accident report’ as the investigator's own report, which is admissible. See Cranfill Sumner, What Information From an NTSB Report is Admissible Evidence in Court? (July 10, 2023); Olson Brooksby, The Admissibility of NTSB Fact Reports at Trial (Sept. 30, 2013).
- 17 49 C.F.R. § 835.3 (Board employees . . . shall not give any expert or opinion testimony); 14 C.F.R. § 13.227. The employee of the FAA may not be called as an expert or opinion witness, for any party other than the FAA). The Fifth Circuit noted in *Campbell v. Keystone Aerial Surveys, Inc.*, 138 F.3d 996, 1001 (5th Cir. 1998) that “federal law flatly prohibits the NTSB accident report from being admitted into evidence in any suit for damages.” See Cranfill Sumner, *supra* note 16.

About the Author

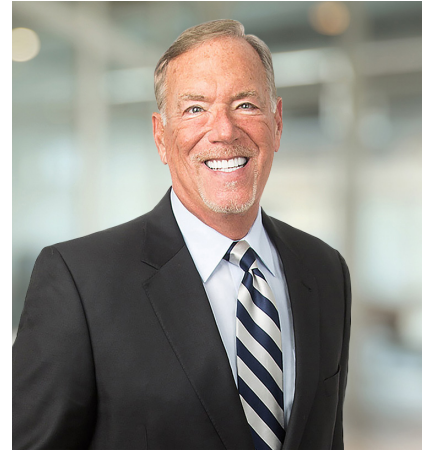
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