

THE AVIATION DISASTER FAMILY ASSISTANCE ACT OF 1996

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Introduction

The "Aviation Disaster Family Assistance Act of 1996" was enacted following the aviation disasters of ValuJet Flight 592 and TWA Flight 800. These aviation disasters heightened the need to address the problems and concerns confronting the families of air disaster victims. These issues ranged from improper attorney solicitation to the inadequate flow of information immediately after the accident. In the ValuJet matter, the allegations of "improper" conduct demonstrated by soliciting attorneys included one law firm's distribution of business cards not only in the hotel lobby where the families of the victims were staying, but also at a memorial service at the Everglades crash site. As a result of the persistent solicitation, several families requested an injunction against these lawyers.

Moreover, during the weeks following the TWA Flight 800 disaster, the families of the victims complained about the inadequacy of the air carrier in providing any information regarding the victims. Numerous families had to wait days for the air carrier to confirm the deaths of their family members, while others waited weeks for the identification of recovered bodies. Many families claimed that the inability to obtain information was the result of the "bureaucratic friction" that existed among the many individuals and agencies involved.

The experiences of these two aviation disasters precipitated the enactment of the Aviation Disaster Family Assistance Act of 1996. After much advocacy on the part of the families involved in the aforementioned disasters, the bill was passed in the House on September 18, 1996 by a vote of 401 to 4 and then in the Senate on October 3, 1996, by a vote of 92 to 2. Subsequently, the bill was enacted into law on October 9, 1996.

The Aviation Disaster Family Assistance Act of 1996 gives the federal government a formal role in assisting the families of aviation disaster victims. Moreover, this Act provides guidelines for the effective management of the aviation disaster in order to ensure that similar situations to ValuJet Flight 592 and TWA Flight 800 do not occur in the future.

Responsibilities of the National Transportation Safety Board in Providing Assistance to Families of Passengers Involved in Aircraft Accidents

Under the Aviation Disaster Family Assistance Act of 1996, hereinafter referred to as the "Act", the National Transportation Safety Board, hereinafter referred to as the "NTSB," is authorized to provide assistance to the families of passengers involved in aircraft accidents which occur in the United States. According to the Act, as soon as practicable after an accident, the NTSB Chairman must appoint a director of family support services who will assist families of passengers involved

in the accident. The director of family support services is responsible for functioning as a liaison between the air carrier and the families. Moreover, the NTSB has federal responsibility for facilitating the recovery and identification of fatally injured passengers. This provision was included in order to ensure that the NTSB can take the necessary actions with medical examiners and local authorities in order to speed the recovery and identification of those individuals killed in the accident.

Furthermore, during the course of its investigation, the NTSB must ensure that the families of the accident victims receive any information pertaining to the accident prior to public briefings. Additionally, the NTSB must individually notify the families of any public hearings and meetings that the Board will conduct about the accident. Finally, the NTSB chairman must designate an independent nonprofit organization (for example, the Red Cross) to execute humanitarian efforts such as providing emotional assistance to the families of the accident victims.

Responsibilities of the Designated Organization in Providing Assistance to Families Involved in Aircraft Accidents

The Act states in part:

"As soon as practicable after being notified of an aircraft accident The Chairman of the National Transportation Safety Board shall--
(2) Designate an independent nonprofit organization, with experience in disasters and post trauma communication with families, (that) shall have primary responsibility for coordinating the emotional care and support of the families of passengers involved in the accident."

Under Subsection (c) of the Act, the responsibilities of the designated organization are set forth. Initially, the organization must provide mental health and counseling services in coordination with the air carrier's disaster response team. The organization must also provide an environment where the families can grieve in private, without the intrusion of the press or lawyers. Furthermore, it is responsible for meeting with the families who arrive at the location, contacting and updating the families who are unable to attend the location, and continuing to communicate with the families until the director of family support makes the determination that further assistance is no longer required. Finally, the organization must arrange a memorial service in consultation with the families.

Responsibilities of Air Carriers in Providing Assistance to Families of Passengers Involved in Aircraft Accidents

Under 49 U.S.C. § 41113(a), each air carrier must submit a plan for providing assistance to family members of aviation accident victims to the Secretary and Chairman of the NTSB. Following the enactment of the Aviation Disaster Family

Assistance Act, air carriers were given until April 9, 1997, to submit the plan. Thereafter, any new air carrier applying for a certificate of public convenience and necessity under 49 U.S.C. § 41102 must submit a plan in order to receive the Secretary of Transportation's approval. Subsection (b) of 49 U.S.C. § 41113 provides the minimum elements, which must be included in the air carrier's plan. The first requirement provides for the publication of a staffed, toll-free telephone number for the purpose of managing calls from family members. As soon as the air carrier has verified which passengers were aboard the aircraft, it must notify the families of the names of those passengers prior to public release of that information. The air carrier is also responsible for informing the families of the deaths of their family members. Additionally, the air carrier must provide the director of family support services and the designated organization with a list of the names of those passengers who were on board the aircraft. This list must be periodically updated. It is important to note that under 49 U.S.C. § 41113(d), the air carrier will not be liable for any actions arising out of its preparing or providing the passenger list, unless the air carrier's conduct was grossly negligent or intentional.

Other responsibilities of the air carrier are: consult with the families of the passengers regarding the disposition of remains; return any possessions of the passengers that are in the control of the air carrier to the families of the passengers (unless required for a criminal investigation); retain any unclaimed possessions for eighteen months; consult with each family about the construction of any monument for the passengers, including the inscription on the monument; ensure that the families of nonrevenue passengers receive the same treatment as the revenue passengers; work with the designated organization in order to ensure that the families of the passengers receive an appropriate level of assistance; provide reasonable compensation to the designated organization; and finally, assist the families in traveling to the location of the accident and provide for the physical care, such as hotels and meals, of the families.

Prohibited Actions by Lawyers, Insurance Agents and Other Representatives

The Act also includes a provision that prohibits certain conduct. Subsection(g) prohibits any person from impeding the ability of the NTSB, the director of family support services, or the designated organization in carrying out its responsibilities or the ability of the families to have contact with one another. This subsection also includes a prohibition on lawyers making solicitations within thirty days of the accident. This provision was designed in order to protect the privacy and tranquility of the families from intrusive, unsolicited contact by lawyers, law firm employees, or others related to potential litigation during the period of immediate grieving. In the event that an individual violates this subsection, they will be liable to the United States government under 49 U.S.C. § 1155 for a civil penalty not to exceed \$1,000. Additionally, for every day that the violation continues, a separate violation occurs.

As of this printing, there is only one pending case involving an alleged violation of Subsection(g) of the Act. This case is entitled United States v. Lebovitz, et al., No. 98-WM-310 (D. Colo. filed Feb. 9, 1998). In this case, a Scenic Airlines Cessna 208 crashed shortly after taking off. As a result, the pilot and all of the eight passengers were killed. The accident occurred on October 8, 1997. Subsequently, on October 15, 1997, just eight days after the accident, an attorney solicited the family of a victim killed in the accident. The solicitation was in the form of a letter concerning a potential action for wrongful death. At no time within the thirty-day period did the family communicate with or solicit the attorney or the law firm. Accordingly, the United States Justice Department filed suit in the District of Colorado against the defendant-attorney and his law firm for violation of Section 1136(g) of the Aviation Disaster Family Assistance Act of 1996. The United States is seeking a permanent injunction enjoining the defendant from such actions, a civil penalty in an amount to be determined by the court, and court costs.

Task Force on the Aviation Disaster Family Assistance Act of 1996

In an effort to continue to address the needs of families of passengers involved in aviation accidents, the Act established a task force. This task force is comprised of individuals representing the NTSB, the Department of Transportation, the Federal Emergency Management Agency, the American Red Cross, air carriers and families who have been involved in aircraft accidents. The task force serves to examine the legal and social issues related to aviation accidents in order to create guidelines and make recommendations to assist air carriers and other agencies in responding to aircraft accidents.

On October 29, 1997, the task force submitted its first report of recommendations to Congress. The report included sixty-one recommendations, all of which involved the treatment of families of passengers involved in aviation accidents. The dominant issue addressed in the report was the timely, sensitive notification to family members of the accident victims. Other recommendations included: recognizing a broad definition of what constitutes a "family member" for purposes of the air carrier providing notification and assistance for travel and accommodations; developing a readily accessible passenger manifest which requires every passenger to provide a "contact name" for the air carrier in the event that an accident occurs; and extending the prohibition of solicitation by attorneys to forty-five days.

Congress is currently reviewing these recommendations. According to Steven Okun, Special Counsel to the Department of Transportation and former Executive-in-Charge of the task force, there are several other areas that the task force is currently working on in conjunction with air carriers. For example, in the last few months, family members of the accident victims involved in TWA Flight 800 have provided training to airline personnel. This training seeks to provide an insight to the airline personnel in order to improve the manner and

sensitivity of the airline's response. Additionally, the task force is attempting to organize volunteer legal services teams led by state and local bar associations in order to provide assistance in the areas of probate and insurance law.

Conclusion

Will the Aviation Disaster Family Assistance Act of 1996 correct some of the problems that family members of aircraft accident victims have encountered in the past? Will it provide the necessary help to the family members in the time of their greatest need?

These questions were somewhat answered, as a result of the September 2, 1998 crash of Swissair flight 111 off the coast of Nova Scotia. Swissair had just filed its Airline Family Assistance Plan in June of 1998 with the Department of Transportation and the NTSB. The praise of Swissair by public officials in the immediate aftermath of the tragic crash of flight 111 stood in stark contrast to the criticism of TWA by those same officials after the tragic crash of its flight 800. It is clear that the difference in response to these two tragic events by TWA and Swissair was likely due, in some part, to the existence of Swissair's Family Assistance Plan.