

INTERNATIONAL LAW

Attorney recovers in three cases for crash victims

Steven Marks
Podhurst Orseck

Eight years. Three cases. Four countries. Dozens of plaintiffs, one so grief stricken he stabbed to death the air traffic controller he held responsible. But finally aviation attorney Steven Marks' work for families of dozens of Russian schoolchildren who died in a mid-air collision 35,000 feet over Germany in 2002 is nearing an end.

A Spanish court in October entered the order for a \$14.5 million verdict reached earlier this year to be collected from the U.S. aviation equipment makers blamed for the accident, said Marks, an attorney with Podhurst Orseck in Miami.

The Russian airline and Swiss air traffic control were also found liable in separate court actions, and the award in the Swiss case was scheduled to be distributed a month ago.

"I certainly didn't expect it to cost so much, or take this long to resolve," Marks said. "It was a very bad decision on the part of the insurer. It could have settled this years ago."

Marks represented 30 people, mostly schoolchildren from the Russian republic of Bashkortostan who were flying to a summer festival in Spain on July 1, 2002, when their Bashkirian Airlines flight collided in mid-air with a DHL plane. All 69 people on the Russian Tupelov-154 and the two crew members aboard the DHL Boeing 757 died.

Investigators said the collision was caused by Swiss air traffic control company Skyguide, and by the American-made traffic collision warning system used on the planes, which gave orders that contradicted the instructions from the Swiss controller. An investigation showed the air traffic controller told the Russian airliner to descend, contradicting a warning given by the plane's onboard anti-collision system to climb. Meanwhile, the DHL plane was also descending, and the two planes collided.

Marks filed three claims. In the largest case he found a judge in Barcelona, Spain, receptive to testing The Hague Treaty on Product Liability, which ultimately enabled him to obtain twice as much in damages for the victims as they would otherwise have won, he said.

"It had never been used. It's easy to establish product defect in Europe, and I knew I was going to have a good liability case.



J. ALBERT DIAZ

Aviation attorney Steven Marks, who worked for the families of Russian schoolchildren who died in a plane collision, said this was the first case of a U.S. aviation manufacturer being held liable in Europe.

But I had to convince the court we had to apply this treaty," he said.

The treaty requires liability to be determined according to the law of the country where the defendants exist. This was New Jersey and Arizona, home to the aviation equipment manufacturers, Honeywell and Aviation Communications and Surveillance System (ACSS). Marks insisted his cases each be in separate courts, so there would be no consolidation of defendants and he wanted no case in Russia, which would mean low damages.

The claim against Swiss air traffic control Skyguide was made in Zurich. The one against the Russian airline went to Madrid. For the product liability case Marks filed at the same time in Barcelona and New Jersey, banking on getting a jurisdiction transfer to Spain.

"This was exactly what I wanted. We had three cases proceeding in two countries with three different judges."

The Zurich case resulted in a payment of about \$130,000 per person. The Madrid verdict against the airline resulted in a verdict of about \$20,000 per person and is being appealed by

both sides. And the \$14.5 million product liability verdict, about \$450,000 per person, should be paid out very soon, even though the case is still under appeal.

That case is significant because by being tried in the European Union using U.S. product liability law, the victims obtained a larger verdict. It was also the first instance of a U.S. aviation manufacturer being held liable in Europe. That can open the door to future suits.

In addition to the other hurdles, the sole air traffic controller on duty during the collision, Peter Nielsen, was stabbed to death at his home by a grieving Russian father whose wife and two children died in the crash. He was dropped as a plaintiff.