

MH370: first suit filed as airline, insurer blasted as ‘irresponsible’

By Ean Higgins

A US law expert in air crash compensation has filed the first legal suit involving a victim of Malaysia Airlines Flight MH370, claiming that the airline and its insurers have stonewalled against fair settlements.

The move comes despite some novel legal complexities, with the wreckage of the aircraft yet to be found, the cause of its disappearance unknown, and increasing opinion in aviation circles that the captain hijacked his own aircraft.



If the “rogue pilot” theory is substantiated, it could block the capacity of victims’ families to sue US aircraft manufacturer Boeing if a design flaw were found.

The managing partner of US lawyers Podhurst Orseck, Steven Marks, has filed a suit in the US District Court of Washington DC on behalf of the family of Phillip Wood, a Texan working for IBM in Asia who was one of the 239 people who died on MH370 on March 8, 2014.

Both Malaysia and China are parties to the Montreal Convention, which sets rules and procedures on how those affected by mishaps in aviation are to be compensated.

Mr Marks said Malaysia Airlines and its insurer Allianz were resisting the normal process of resolving such claims, forcing him to mount the initial lawsuit before the two-year statute of limitations expires in March.

“I have never seen an insurance company or an airline act so irresponsibly, so insensitively,” he told *The Australian*.

Under the convention, Mr Marks said, the case of Mr Wood can be tried in US courts because he was regularly domiciled in the US and his ticket was purchased through a US booking agency.

Mr Marks is also representing families of Chinese, Malaysian and Indian MH370 victims. Because what such families are likely to receive in compensation can vary immensely if they are forced to pursue claims through the courts in their respective countries, airlines and their insurers will usually agree to an average compensation for all.

In this case, Mr Marks said, after nearly two years of negotiations, the airline and Allianz had “not even made any offers to the foreign families, and they have made completely inadequate offers to the US families”.

Mr Marks speculated that one reason Allianz might be resisting payouts is that it has had a trifecta of major air accidents for which it was the insurer. On top of MH370, which would have cost Allianz \$US250 million to recompense Malaysia Airlines for its Boeing 777, he said it had had to fork out a similar amount for the loss of the Malaysia Airlines aircraft of the same make that was shot down in Ukraine in 2014.

Allianz was also the insurer for the Germanwings Airbus A320 flight that went down in the French Alps last March when the co-pilot locked the captain out of the cockpit and deliberately crashed the aircraft.

Mr Marks said theories that MH370 captain Zaharie Ahmad Shah hijacked his aircraft were lacking in evidence and “irresponsible”.

There is no suggestion that the specific Boeing 777 of Flight MH370, or that model generally, had a design flaw. But if one were to be revealed, it would be in the interests of the Malaysian government, which is the majority owner of Malaysia Airlines, for the “rogue pilot” theory to be disproved so plaintiffs could concentrate their lawsuits on Boeing rather than the airline.

A Malaysia Airlines spokeswoman said the airline and its insurers had “consistently endeavoured to negotiate fair and reasonable compensation in good faith with a number of claims now having been settled and many more being the subject of advanced discussions with a significant number of further settlements anticipated”.

Allianz did not respond to requests for comment yesterday.