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EXCLUSIVE

What's the price of a life?

How the human tragedy of a plane crash becomes the cold, hard stuff of litigation

**COVER STORY**

Tragedy's bottom line



When a plane crashes, lawyers embark on a painstaking and often gruesome exercise to decide who should pay for lost lives

By Blake Morrison,
USA TODAY

CHICAGO – For at least 21 seconds, the passengers knew they were going to die.

Lawyers Thomas Demetrio and Jamie R. Lebovitz couldn't shake that image. Just days before trial, they bet a jury wouldn't be able to, either.

Since USAir Flight 427 crashed outside Pittsburgh on Sept. 8, 1994, Demetrio, Lebovitz, and a cadre of lawyers for families of the dead had spent years building cases against the airline and jet manufacturer Boeing.

They hired economists to turn the life of each victim into dollars and cents. They bought the tail of a Boeing 737 for a courtroom exhibit. One lawyer even spent \$70,000 for a jet part he could find only on a scrap heap in Peru.

And in perhaps the most gruesome exercise, the lawyers tried to assess what passengers experienced during those final 21 seconds – from the time the 737's rudder likely jammed and the jet rolled onto its back until it barreled nose-first into the ground, killing all 132 aboard.

Someone, they vowed, would pay for the lives that were lost.

Like more than 90% of lawsuits filed after commercial jet crashes, Lebovitz and Demetrio's cases would be settled before a jury heard the story. Only hours before a trial was to begin in Illinois state court in November, the family of Marshall Berkman, a Pennsylvania manufacturing executive, agreed to the largest settlement ever paid to the estate of a commercial airline crash victim: \$25.2 million.

Now, with 217 dead in the Oct. 31 crash of EgyptAir Flight 990, lawyers have begun preparing scores of new lawsuits. As the litigation from Flight 427 demonstrates, the process will be haunting and complex – and certain to last for years.

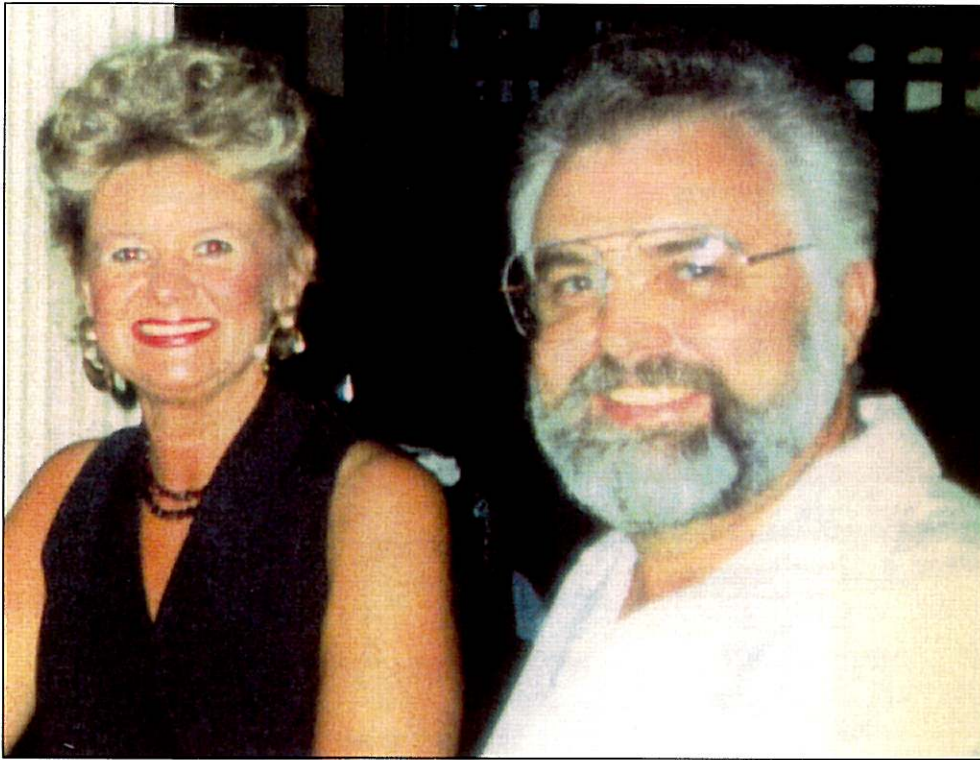
Lawyers for Boeing, USAir (now US Airways) and jet parts-maker Parker-Hannifin – defendants in suits stemming from the crash of Flight 427 – declined to talk about the litigation. But lawyers for the families of victims, their expert witnesses and some family members spoke at length in dozens of interviews. Their stories, and hundreds of pages of court documents from the lawsuits, provide a vivid account of how such cases come together, from the moment a commercial jet crashes to the day a suit is settled.

Getting the client

In the house she once shared with her husband, Donna Rae



Dramatic tactic: Lawyers Jamie Lebovitz, left, and Michael Demetrio planned to ask to erect this 737 tail outside the courthouse in Chicago where their lawsuit in the crash of USAir Flight 427 would be tried



'Loss of society': A family snapshot shows Donna Rae Peters with her husband, Bill, shortly before he died in the crash of Flight 427.

Peters wept. Just 10 days earlier, Bill Peters had died in seat 10C of Flight 427. For eight hours this September day, lawyer Jamie Lebovitz passed her Kleenex and listened to tearful recollections of their life before the crash. Then Lebovitz and Peters shared a drive through McMurray, Pa., where Bill and Donna Rae had raised their three sons. By the time they hugged goodbye, Peters, then 53, had signed a retainer assuring Lebovitz 23% of any verdict or settlement a rate consistent with those charged by other aviation lawyers.

For Lebovitz, 43, the day-long sales pitch meant missing the first soccer goal scored by his 6-year-old son, Jordan. It also meant gaining a client and, in the end, a paycheck that could put Jordan through college three times over.

The financial stakes make such sacrifices small for the few dozen lawyers who specialize in aviation law. Indeed, the families of all who

die in a jet crash, whether they sue or settle before suing, end up with something. Those payoffs make securing a client perhaps the most hotly contested aspect of air disaster litigation.

For years, hard-sell tactics were common. In 1996, after the ValuJet crash in the Florida Everglades killed all 110 aboard, at least two lawyers shadowed families in Miami hotels.

Congress was so outraged that it passed the Aviation Disaster Family Assistance Act. The law prohibits lawyers from contacting victims or family members within 30 days of a crash. For the most part, lawyers have complied.

Within months of the USAir crash, Lebovitz had begun preparing lawsuits on behalf of Peters and three other families. More than a year later, many of the 84 suits stemming from the crash had been filed. More than a dozen of the lawsuits ended quickly with out-of-court settlements, and many families of the flight's other 48 passengers and crew members reached settlements without suing.

For the rest, it would take another full year and more than a dozen strategy sessions among lawyers before plans for a trial began to take shape.

Building the case

In air disaster litigation, the small number

of suits that aren't settled go to trial in two phases. In the first, the liability phase, lawyers for the victims' families must show that someone — the airline or jet maker, for instance — is to blame. Although many lawyers may be representing crash victims, the court appoints a small group of them to handle a single liability trial on behalf of all who died. The rationale: Everyone was killed as a result of the same accident, and consolidating the liability aspect of the lawsuits avoids duplication.

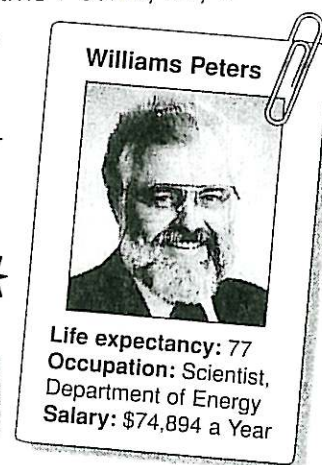
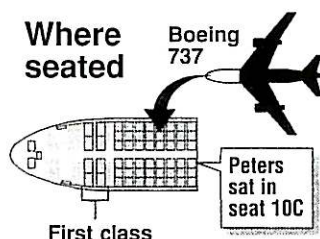
If this group of lawyers, called a "steering committee," can prove who was responsible for the crash, the second stage of the litigation, the damages phase, begins. Unlike a class-action lawsuit, each suit is considered separately to determine how much family members should be compensated for their loss.

The lawyers were members of two steering committees. One represented families that had filed in federal court; the other worked for families suing in state court. The steering committees had hundreds of thousands of dollars to spend to prove that USAir, Boeing or Parker-Hannifin was to blame for the crash. That's because every lawyer involved in the litigation had contributed \$2,500 per client up-front and had pledged 2% of each settlement.

Most air crash suits end up in federal court because the victims and defendants are usually from various states, each with different rules that govern how lawyers can build their cases. Lebovitz, Demetrio and some other lawyers wanted to keep their cases in Illinois state court, in part because they consid-

Placing a value on life

In an air crash lawsuit, economists calculate a victim's financial contribution to his family had he not died prematurely. In these projection, economist James Kenkel calculates the worth of Flight 427 victim Williams Peters, 54, a scientist from McMurray, Pa. His family settled its lawsuit against USAir and Boeing for an undisclosed amount.



Peters' worth

Low estimate: This projection assumes that Peters would have worked 11.5 more years.

High estimate: This projection assumes that Peters would have worked in the Energy Department until age 62, then as a consultant until age 70. Experts say he could have made \$125,000 a year as a consultant.

	Low estimate	High estimate
Potential assets		
Earnings	\$988,074.06	\$1,655,256.86
Retirement income	\$625,415.81	\$744,201.15
Employer thrift plan contributions	\$49,403.70	\$32,762.00
Performance of household chores	\$85,045.00 (at \$5 per hour)	\$136,072.00 (at \$8 per hour)
Potential debits		
Personal food, clothing, etc.	-\$197,614.81	-\$331,051.37
Total lost because of death	\$1,550,323.76	\$2,237,240.64

Source: James Kenkel, economist

by Gary Visgaitis, USA TODAY

ered court rules more favorable there and a jury more likely to award top-dollar damages. They succeeded. Because Flight 427 had originated at

Chicago's O'Hare International Airport, the lawyers were able to list USAir maintenance workers based there as defendants.

As part of the liability case, the lawyers had decided to use a computer simulation by the National Transportation Safety Board to show how the 737 went down. For dramatic effect, they planned to synchronize the cockpit voice recorder and the simulation, matching the screams of the pilot to the moments before impact.

Just listening to the voice recorder had left the lawyers ashen. By law, the cockpit recordings are almost never made public; only transcripts are issued, in part to protect the privacy of the pilots. Just a few people – the lawyers, their experts, federal investigators and others with a stake in the crash – are allowed to hear the tapes. Lawyers for the families planned to ask the judge to let the jury listen. The screaming of the pilot would be at least as powerful with jurors as it had been with them, they reasoned.

The lawyers also hoped that the defendants might point blame at one another. In past crashes, liability had become a battle between airline and jet maker. By fingering the other, each hoped to avoid paying damages, or at least reduce its share substantially. "As adroitly as possible, we put on our case and watch the two giants blame each other," says Demetrio, 52, who had filed suit on behalf of Berkman's family and 10 others. "We didn't need to be aggressive in blaming Boeing or USAir," he says. "They were going to do that for us."

A price tag on life

As the lawyers built the liability case, they also worked on the second phase of their suits: determining how much money they might collect for the families.

Many hired James Kenkel, a University of Pittsburgh economist, who computed the lost earnings of more than 50 victims of Flight 427.

Using a basic but detailed formula, Kenkel analyzed the amount of financial support that a victim would have provided his family had he not died prematurely. Kenkel projects a victim's earnings from income tax filings, employee handbooks that outline fringe benefits and Department of Labor tables that predict how long a person might work. From that amount, he subtracts money the victim would have spent during his life on everything from food and clothing to transportation and entertainment.

Lawyers for the airlines or other defendants often hire their own economists, who assess earnings potential more conservatively. They might argue, for instance, that a victim would not have been promoted for the rest of her career, or that she was about to be fired. In either scenario, projected earnings would be greatly reduced.

Lawyers for the families try to go beyond those price tags and give life to those who died. The legal term is "loss of society." For a lawyer, that means talking about the daughter whose mother won't see her marry, or the widower who must raise his kids alone.

Lawyers concede that the longer the post-crash suffering of family members, the better the case. A widow who lost her husband in a crash and still isn't dating several years later, for example, stands to collect more money than a widow who has remarried.

To help chronicle the loss, Lebovitz produces a "settlement and trial brochure," a black, hard-cover book that uses photographs and narrative to tell the victim's life story. It includes the autopsy report, birth and death certificates, testimonials and sympathy cards. Copies of the book are sent to defense lawyers and the judge, in part

to help speed a settlement.

"The purpose is to put the settlement negotiations on an entirely different level -- a human level, not an attorney-adjuster level."

Pre-crash terror

When Todd Peters thinks about his father's last moments, he prefers to believe that Bill Peters blacked out in his aisle seat on the exit row. "We picture it being this tragic, screaming event," Todd Peters says. "But I really believe your body would just shut off."

Richard Levy was prepared to testify otherwise.

For 30 years, the psychiatrist has made a career studying how humans react in the last moments of life. His conclusion: "They do know what hit them. They do know what's coming."

Levy's expertise in psychosomatic medicine gave the lawyers a vivid description of the inside of the cabin as Flight 427 dove. In some jurisdictions, lawyers aren't allowed to attach dollar figures to those seconds of suffering. And defense lawyers question how Levy can be sure that any one passenger endured the hell he describes.

Still, families' lawyers often use Levy to create the sort of indelible image that ensures juror empathy. "If you don't have the pre-impact terror in the case, the juries don't see the case from the same point of view it brings the case alive."

Levy learned his trade during years as an Air Force psychiatrist and flight surgeon. In the military, he studied survivors and tapes from fatal plane crashes. Today, as an expert witness and aeromedical consultant who charges \$300 an hour, he reviews flight data and cockpit voice recordings, focusing on the final words of the doomed pilots.

"It's a horrible experience to listen to a pilot who knows he's going to die," says Levy, 67.

"What impresses you is the tone, the pitch of their voice, the urgency, the terror, the fear."

Levy describes the last moments for the passengers of Flight 427 this way:

At 21 seconds to impact, the jet lurches left and "immediately their stomach is going to grab." A few seconds later, as the autopilot disconnects and a horn begins to wail, "they're going to look out the window and say, 'My God! What's happened?' They'll turn white. They'll start to sweat, sweat profusely in what's called a cold sweat. They'll grab their seat. Then when Flight 427 did the descent in the spiral and did a 360, people most probably lost control of their sphincters, their bladder, their bowels." Some vomited, he says.

In the final seconds, as the pilot repeated, "Oh God, Oh God," and as luggage flew about the cabin and passengers slammed against their seats, Levy believes many experienced a "life review process." In as little as three seconds, he says, their lives passed before their eyes.

Some families don't want to envision such a scene and would rather believe as Todd Peters does. Levy understands why. "It's a very hard concept to open your mind to," he says of the final moments.

The settlement

By November, more than five years had passed since the crash of Flight 427. Donna Rae Peters had settled her suit confidentially more than two years earlier. Of the 18 lawsuits handled in Illinois state court, only five remained.

With their liability trial set to begin in those cases, Lebovitz and Chicago lawyer Michael

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– Lawyer Jamie Lebovitz

Demetrio, Thomas' brother, hatched a grand plan. If it worked, they hoped it would bring the remaining cases to a quick and lucrative close.

They wanted to erect the tail of a 737, nearly three stories tall, outside the courthouse in Chicago. Beside it, weather and judge permitting, they would present their opening statement, demonstrating to jurors why they believed the tail's rudder malfunctioned and brought the jet down. Thomas Demetrio doubted the judge would allow it. Too many distractions. He would ask nonetheless, "just to tweak" lawyers for US Airways and Boeing.

But only hours before the trial was to begin, Lebovitz, the Demetrio brothers and other lawyers settled the state court cases, including the record Berkman deal. The liability case they had spent years preparing would never be heard.

Like most cases that end in settlements, much about the negotiations is a closely guarded secret. Lebovitz says only that Boeing and US Airways pushed for settlement talks the week of the trial. But Thomas Demetrio says he always believed a jury would hear his case. In part, he says, that was because the first settlement offer he received in the Berkman case didn't come until the week before the trial was to start.

It was for \$7.5 million, and Demetrio's answer was terse. "I said, 'It's rejected,' and they then asked, 'Is there going to be a counter?'" No, Demetrio says he told defense lawyers. Early the next week – the week of trial – Chief Judge Donald O'Connell began supervising the settle-

ment talks. Only then, Demetrio says, did the discussions become serious.

For 10 hours over two days, O'Connell explored settlement options in private conferences with the lawyers. If \$20 million were offered, would it be accepted? he asked Demetrio. No, Demetrio said. He told the judge he needed at least \$25 million, a sum Demetrio says now that he never expected, "not in a hundred years." Finally, less than 24 hours before trial, the defendants made their final offer: \$25.2 million. Demetrio wasted no time settling.

The Berkman case was by far the largest settlement among the lawsuits. Although other cases settled for between \$5 million and \$10 million, one lawyer estimates that most families received between \$1.25 million and \$2 million.

Demetrio and Lebovitz think the crash of EgyptAir Flight 990 three days earlier may have helped prompt their settlements. Phil Condit, Boeing's chairman and CEO, says the crash had no impact. But the lawyers reason that Boeing wanted to avoid the publicity a trial would generate, especially so soon after another deadly accident.

Who paid what share of the settlement also is unknown, even to lawyers for the families. Settlement checks often are drawn on nondescript accounts maintained by insurance underwriters representing the defendants. In part, that's because neither the airline nor the jet builder wants it publicly known what amount of blame it has conceded.

Of the 84 suits from the crash of Flight 427, four – all federal court cases in Pennsylvania – remain unsettled. No trial date has been set for those suits.

Defense lawyers routinely blame lawyers for the families for prolonging the suits. And families' lawyers admit that waiting until just before

trial usually ensures top-dollar settlements. But to their clients, they say, the lawsuits are more about justice than money.

"The lawsuit can't undo the damage," Lebovitz says. "But it can provide hope that someone else will not have to suffer the same loss, the same terror, the same misfortune these families did."

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