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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, 1,8-9A

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.

Lawyer Thomas Demetrio couldn't shake that image. Just days before trial, he bet a jury wouldn't be able to, either.

Since USAir Flight 427 crashed outside Pittsburgh on Sept. 8, 1994, Demetrio 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, Demetrio's case 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 Peters wept. Just 10 days earlier, Bill Peters had died in seat 10C of Flight 427. For eight hours this September day, Cleveland 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



By Anne Ryan for USA TODAY

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.

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.

Peters' son found Lebovitz through a newspaper article. But many lawyers, Lebovitz included,

obtain passenger lists and send brochures or videotaped introductions to victims' relatives. Others pass out business cards outside the families' homes. Less than a week after Flight 427 crashed – on the same day the first lawsuit was filed – one lawyer was tossed out of a memorial service in McCandless, Pa., after pitching his services to a victim's wife.

For years, such 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.

Even so, some find ways to solicit business in the interim. After the EgyptAir crash, one law firm bought the names to Web sites such as egyptair990.com and placed a link to its site above those for victims' services.

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.

Plotting strategy

They arrived in a limousine, and Arthur Wolk greeted the gaggle of lawyers without leaving the chair at his dining room table. With a cast from armpits to pelvis and his right arm held by a sling, he needed help just to sit.

Not long before the meeting in November 1996, Wolk, an aviation lawyer and pilot, had broken his arm and back when a Grumman Panther warplane he was trying to land hit a fence and burst into flames. Because of his injuries, the lawyers, all of whom represented families of Flight 427 victims, had agreed to meet at his suburban Philadelphia home.

There, in a house whose aviation motif includes a hallway with runway markings and landing lights, the lawyers plotted strategy. Despite his injuries, Wolk had plenty more to offer than the cheese steaks he had ordered from Lee's Hoagie House. He had a theory – and a jet part – that he believed could help the families collect millions.

Wolk was convinced that a rudder malfunction had caused the crash of a 737 outside Colorado Springs in 1991. As part of his work on a lawsuit in that crash, he had bought a 737's power control unit, a 90-pound rudder part about the size of a car muffler.

"To really do this job, I had to buy it, understand it, fail it and find out what had happened," Wolk, 56, says today.

But getting the part through traditional channels had worried him. Boeing was a defendant in that

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

suit, too, and Wolk feared that the company might discourage anyone from selling him the part. So he quietly spread word among a worldwide network



of airplane parts scavengers who forage for equipment from scrapped or wrecked planes.

A month later, a call came. "We found one in Peru," Wolk recounts the caller saying, "and you want it because it's the only one in the world." In a few weeks, a box with the part arrived at his office.

Wolk still isn't sure what the markup was on a part that cost him \$70,000. "It doesn't matter," he says. "Whatever the price, I was going to pay it."

As he told the lawyers gathered at his dining room table, he was confident that the expert he had hired in the Colorado Springs case would be able to show how part of the unit – the servo valve – jammed and brought down both 737s.

When the meeting ended, the lawyers believed they were a step closer to solidifying a case against Boeing and the part's manufacturer, Parker-Hannifin. "Once we started thinking about it, talking about it, we all became more convinced this was a viable theory that we had," lawyer Gerry Lear recalls.

"We all felt, 'OK, this makes sense.'"

Building the case

The lawyers hoped the theory would help them prove who was responsible for the crash.

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 dam-

ages 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 who had gathered at Wolk's house in 1996 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 considered 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.

"I want to show the journey through life that would have been," lawyer Aaron Broder, 75, says. He once demonstrated how much a man meant to his wife by spreading their doubles tennis trophies across a courtroom floor.

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, hardcover 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.

Wolk sends defense lawyers videotapes in which family members offer recollections of their lost loved ones. "Typically, you'll find children who have not had a chance to settle up," Wolk says. "To me, the thing that tears my heart out the most is when a youngster will say, 'I didn't have a chance to say, Dad you were right.'"

"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



COVER STORY

“The lawsuit can’t undo the damage.
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.”

– Lawyer Jamie Lebovitz

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,” lawyer Broder says. “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 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 settlement 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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Attorney—Jamie R. Lebovitz

On January 31, 2000, at approximately 4:21 p.m., Pacific Time, a Boeing MD-83 aircraft (originally manufactured by McDonnell Douglas) operating as Alaska Airlines flight 261 crashed into the Pacific Ocean just outside of Los Angeles, California killing all 83 passengers and 5 crew members. The aircraft was flying from Puerto Vallarta, Mexico to San Francisco, California with a final destination of Seattle, Washington.

While in level cruise flight at 31,050 feet above sea level, the pilots of flight 261 were suddenly confronted with a loss of pitch (vertical) control of the aircraft. The airplane went into a rapid 8,000 foot dive that lasted 80 seconds, during which time the pilots struggled to regain control of the plane. The cockpit voice recorder (sometimes referred to as the black box) recorded the sounds and voices of the pilots during the final 30 minutes of the flight. During what would later be known as the first dive, the following was recorded:

- At 4:09 p.m., the Captain reported to Air Traffic Control, *Alaska 261 we are uh in a dive here.*
- At 4:10.01 p.m., the Captain reported, *I've lost control, vertical pitch of the airplane.*
- At 4:10.01 p.m., and for 33 more seconds, the overspeed warning alarm went off, signalling that the plane was in a precipitous dive at speeds which exceeded its structural design limitations.
- At 4:10.20, the Captain could be heard calling out to his co-pilot, *just help me.*

- At 4:10.33, the Captain reported to Air Traffic Control, *we got it back under control here.*

For the next 9 minutes of flight, at altitudes ranging from 22,000 to 17,000 feet, the pilots were attempting to stabilize and control the plane. Unbeknownst to them, a device known as a jackscrew (a structural attachment of the horizontal stabilizer which is critical for controlling the vertical pitch of the plane) was in the final stages of complete failure. (See diagram on page 3)

As the final 9 minutes of the black box reveal, the pilots' hope that they had regained control soon proved false:

- At 4:11.50 p.m., the Captain stated, *we're in much worse shape now.*
- At 4:12.33 p.m., the Captain radioed the Alaska Airlines maintenance station at Los Angeles International Airport to obtain instructions for dealing with the jammed horizontal stabilizer jackscrew and bringing the airplane in for a safe landing. Unfortunately, the Alaska maintenance personnel knew of no procedures that would enable the pilots to overcome the difficulty with controlling the plane.
- At 4:15.19 p.m., the First Officer (co-pilot) radioed Air Traffic Control and reported that they were at 22,500 feet, with a jammed stabilizer and that they were maintaining altitude with

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Your fundamental rights should be protected.

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difficulty. At the request of the Captain, Air Traffic Control gave flight 261 a heading which directed the airplane out over the Pacific Ocean for further trouble shooting, prior to attempting an emergency landing at Los Angeles airport.

- At 4:17.04 p.m., the Captain instructed the head Flight Attendant that *everything* was to be *picked up, everybody* was to be *strapped down*, and that he was going to *unload the airplane* (a type of maneuver) and see if they could *regain control of it that way*.
- At 4:17.21 p.m., the Captain once again told the head Flight Attendant to make sure the passengers were *strapped in now* because he was going to *release the back pressure and see if (he) can get it back*. (The Captain was going to make certain adjustments to the flight control surfaces on the wings and tail to prepare the plane for a controlled descent and landing).
- At 4:18.47 p.m., the Captain told his co-pilot, *what I wanna do... is get the nose up... and then let the nose fall through and see if we can (stabilize the airplane) when it's unloaded*.
- At 4:18.56 p.m., the co-pilot indicated misgivings over the Captain's plan, stating, *you mean use this again (referring to the flaps and slats)? I don't think we should... if it can fly*.
- At 4:19.14 p.m., the co-pilot said, *if it's controllable, we oughta just try and land it*. The Captain replied, *you think so? Ok let's head for LA*.

For several more minutes, the pilots attempted to configure the plane to prepare for its descent into the LA airport. Then, at 4:19.36 p.m., an extremely loud noise was heard in the cockpit. The jackscrew had completely failed, causing the plane to lose all ability to remain at level flight.

From an altitude of 17,000 feet, the plane began its rapid and chaotic descent to the Pacific Ocean below. During this descent, which lasted 80 seconds, the aircraft and its occupants were subjected to extreme and violent aerodynamic forces that went well beyond the forces to which test and stunt pilots are ever subjected. Immediately after the loud bang, the aircraft went into a dive with its nose pointed straight towards the Pacific Ocean. Seconds later, the aircraft rolled onto its back. For the duration of the plunge, the plane flew upside-down, subjecting the passengers to negative and positive g forces, as well as lateral and longitudinal accelerations.



In the last split seconds of the flight, the black box recorded the co-pilot calling out *mayday* while loose articles hurled about in the cockpit. The Captain could be heard yelling *push and roll; push and roll*—a last desperate attempt to regain

control of the rapidly descending, upside-down aircraft. Then the voices stopped.

- At 4:20.47 p.m., the plane hit the Pacific Ocean with such tremendous force that it resulted in near complete disintegration of the plane. This was not a survivable crash.

In the days following the crash, teams of NTSB, Coast Guard, and other government personnel recovered as much of the wreckage and physical evidence as possible. Ultimately, the

suspect part of the aircraft, the jackscrew, was recovered. (SEE PHOTO). The condition of the jackscrew provided the first clue as to what had happened. Wrapped around the jackscrew was a coil-like material that proved to be the remains of a nut that had been stripped clean. When the nut lost its gripping power it destroyed the jack-screw's ability to adjust the position of the horizontal stabilizer. As the jackscrew was the plane's sole mechanism for adjusting the horizontal stabilizer, the disabling of the jackscrew meant the pilots could no longer control the plane's movement up-and-down.

This evidence was only the beginning of a lengthy investigation fueled by numerous questions. What was the mechanism that caused the jackscrew to fail? Who was responsible for its failure? Did the plane's design incorporate a system of redundancy that would prevent the plane from losing control if the jackscrew failed? Were there systems in place to permit a flight crew to safely detect and correct the problem? Was the failure of the jack-screw due to improper maintenance, or was it due to defective design?

In the aftermath of memorial services for the victims, when the grieving of their families turned to a quest for answers and justice, lawsuits were brought against Alaska Airlines, McDonnell Douglas, and Boeing (which had acquired McDonnell Douglas in 1997), as well as several other product defendants, in various federal courts across the United States. As with all major air crash disaster litigation, the many lawsuits were transferred to a single federal judge whose job it was to oversee the entire litigation. Judge Charles Legge of the federal district court in San Francisco presided over the flight 261 litigation until he retired in May of 2001. Afterward, Judge Charles Breyer was appointed as his replacement and presided over the litigation through its conclusion.

Attorney **Jamie R. Lebovitz**, a senior member of the Nurenberg, Paris law firm, and Chair of the firm's Aviation Litigation Group, was one of just a handful of lawyers from around the United States appointed by Judge Legge as one of the lead attorneys to conduct the litigation on behalf of the victims' families. Lebovitz, who was retained personally by 18 of the families of the flight 261 victims, is among the few aviation attorneys in the United States who is regularly appointed to the plaintiffs' Steering Committees that represent the interests of the families of air crash victims.**

Over the next three and a half years, Mr. Lebovitz and his colleagues in the flight 261 litigation used every means to discover and identify the evidence that would answer the many complex questions raised by the crash.

Answers did not come easily. Boeing and Alaska, determined to mitigate their responsibility and financial exposure, mounted a strong defense. Pretrial preparation involved numerous battles. The defendants attempted to withhold key documents and information on the basis of confidentiality and other legal privileges; the defendants sought, through choice of law arguments, to have certain federal or state laws applied that would give them the least exposure to the families' damages claims. The defendants also engaged in finger pointing. Alaska Airlines blamed Boeing/McDonnell Douglas for selling it a dangerously defective plane; Boeing blamed Alaska Airlines for not maintaining or operating the aircraft according to prescribed procedures.

Despite these ongoing battles, the plaintiffs were successful not only in obtaining the allegedly confidential documents and getting a



favorable choice of law ruling, but ultimately in getting both Alaska and Boeing to admit their liability for causing the crash. To do so, the plaintiffs took over 100 depositions of Boeing and McDonnell Douglas engineers, as well as of pilots, mechanics, and flight operations personnel from Alaska Airlines; reviewed over half a million documents obtained from Alaska, Boeing, and others; recruited a dynamic brief writing team including Nurenberg, Paris lawyers Kathleen St. John and Brenda Johnson, to research and brief the complex choice of law issues that would determine the damages available to each of the families; and retained numerous experts in the fields of aircraft design, pilot and flight operations, aerodynamics, metallurgy, forensic medicine, and aircraft reconstruction.

The evidence of Boeing and Alaska's misconduct that led to this crash was extensive and compelling. The following lists only some of the facts that were revealed during discovery:

- Boeing knew for well over 20 years prior to the crash that the means for inspecting the wear condition of the jackscrew were seriously flawed.
- Boeing knew that the type of jackscrews used on its aircraft often wore out at a rate well beyond what was expected.
- Boeing knew since the late 1960's that the failure of the jackscrew—which provides a single load path to the horizontal stabilizer—would produce catastrophic consequences. Despite this knowledge, Boeing failed to incorporate state-of-the-art systems of redundancy, as found in other models, which would have prevented this crash.
- Boeing knew that the trouble-shooting procedures for jammed horizontal stabilizer jackscrews contained in the MD-83 flight manual were dangerously flawed, and that by following these procedures pilots were unwittingly placing the aircraft and its occupants in grave danger.
- Boeing knew for over thirty years prior to the crash that jackscrews should be lubricated every 600 flight hours so as to ensure the longest possible useful and safe life. Despite this, and without any further testing, Boeing told airlines that it was safe to extend lubrication intervals to as much as every 3,600 flight hours.
- Alaska Airlines, on September 27, 1997, overruled a maintenance inspector's written order to remove and replace the jackscrew on the aircraft that, three years later, would operate (and crash) as flight 261. The mechanic had concluded that the jackscrew was worn to its maximum limits. Several days later, a maintenance supervisor from a different shift ordered that the jackscrew be re-inspected. On this second occasion, the supervisor gave the jackscrew a passing grade and the plane was returned to service. The next inspection scheduled for this plane was in March of 2000. The plane, however, crashed two months before then, in January 2000.
- Alaska Airlines extended the time intervals at which jackscrews in its fleet of aircraft were to be inspected and lubricated, beyond the intervals used by other major airlines. (Alaska relied on Boeing documents which lulled Alaska into believing it was safe to lubricate jackscrews every 2,500 flight hours as opposed to every 600 flight hours).

The trial in this case was set to begin on July 7, 2003. While some families opted to settle their cases early, for emotional or hardship reasons, others were determined to publically expose the wrongs committed by the defendants, in the hope that their efforts would prevent future catastrophes. The NTSB investigation, which took place simultaneously with the 261 litigation, resulted in a full and public disclosure of the wrongdoing by Alaska and Boeing. Importantly, the NTSB issued numerous safety recommendations and mandates to the FAA, Alaska, and Boeing so as to prevent a crash of this kind from ever occurring

again. As of this writing, many of the safety recommendations have been implemented by airlines operating planes similar to that used in flight 261.

As the trial approached, an unprecedented move took place—both Alaska and Boeing admitted in open court full responsibility and accountability for their wrongdoing. At that juncture, the only issue remaining to be tried was the amount of damages to be awarded to each family for its devastating losses. A ruling by the court in May of 2001 (after many months of extensive briefing and court hearings) made it possible for the victims' families to recover damages from the defendants for the pain, suffering, fright and terror sustained by their loved ones; loss of financial support; loss of love, companionship, society, care and comfort; and the loss of the ability to accumulate assets in the victims' estates. With the exception of one case still pending in federal court in Los Angeles, all of the wrongful death cases stemming from the crash of flight 261 have been resolved.



Like most aircraft disasters, what happened to flight 261 was particularly tragic because it was preventable. Careless maintenance and defective design of systems which are supposed to protect passengers from in-flight component failures were the causes of this disaster. What happened to the 88 victims of this crash never should have happened.

Fortunately, there is a Civil Justice system in the United States which allows the families of the crash victims not only to recover damages for their losses, but to expose the wrongdoing of major players in the industry and hold them accountable.

The flying public can take comfort in knowing that in the wake of human tragedy that has forever altered the lives of the husbands, wives, sons, daughters, grandparents and siblings of the 88 victims, some small good has been born. Thanks to the victims' families persistence in uncovering the truth, the airlines and the industry are compelled to change the way they do business and the skies are safer for those who fly.

*As reported in The Seattle Times July 4, 2003.

Among the notable air crash disasters for which Mr. Lebovitz has been counsel, are the following: **Singapore Airlines flight 006 disaster near Taipei, Taiwan; **USAir Flight 405** crash at La Guardia, NY; **Egyptair flight 990** crash near Nantucket Island, Maine; **Swissair flight 111** crash near Halifax, Nova Scotia; **USAir flight 427** crash near Pittsburgh, Pennsylvania; **Valujet flight 592** crash near Miami, Florida; **Delta Airlines flight 7529** crash at Carrollton, GA; **USAir flight 1016** crash at Charlotte International Airport; **USAir flight 1493** crash at Los Angeles International Airport; **United Airlines flight 811** disaster outside of Honolulu, Hawaii; **TWA Flight 800** crash near Long Island, NY; **United Airlines flight 232** crash at Sioux City, Iowa

THE PLAIN DEALER

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TUESDAY, DECEMBER 16, 2011

Akron-area doctor, pilot awarded \$11.35M for plane crash injuries



Jamie R. Lebovitz
with the mock-up of
Cessna Skymaster

PAT GALBINCEA
Plain Dealer Reporter

A Philadelphia jury awarded an Akron doctor and his fiancée \$11.35 million on Thursday as compensation for injuries suffered in a 2007 plane crash outside Atlanta.

Dr. Robert Marsico Jr., 47, a dermatological surgeon who lives in Akron, and Heather Moran, a 39-year-old professional pilot, were lucky to survive the crash, according to one of their attorneys, Jamie R. Lebovitz. He also said the \$11.35 million is one of the largest air crash disaster verdicts awarded to Ohio residents.

The verdict was against Winner Aviation, a Pennsylvania-based company that maintained the plane. The jury found that the plane had not been properly maintained before the crash.

A spokesman for Winner Aviation could not be reached.

Moran flew the twin-engine Cessna Skymaster airplane, which was owned by Marsico. Shortly after taking off Aug. 8 from DeKalb-Peachtree Airport in Atlanta, it developed engine problems and crashed in an unpopulated area near a water treatment facility.

Lebovitz said the crash knocked Moran unconscious, but she was revived by Marsico, whose legs were crushed. As Moran was helping Marsico get out of the plane, a wing exploded - engulfing both in fire. Lebovitz said Marsico suffered lung and respiratory system injuries from breathing in flames and fuel and third-degree burns.

Moran suffered third-degree burns over 40 percent of her body. As a result, she can no longer fly because

she has been unable to pass the FAA's medical examination.

Marsico's plane was maintained for several years by Winner Aviation, which serviced it at the Youngstown-Warren Airport.

Lebovitz said the Skymaster was plagued with recurrent problems with its rear engine. He said maintenance of that engine requires vigilance and regular repairs, which Winner failed to perform.

On the day of the takeoff, the rear engine lost power. While the plane is designed to run on one engine, Lebovitz said the front engine failed to deliver the power needed for Moran to keep it airborne, and an emergency landing was necessary.

Lebovitz said further inspections of the engines - which survived the crash - showed that Winner Aviation did not repair the rear engine and that

the front engine was due for an overhaul that was not performed.

"Following the crash, Marsico was in an induced coma in an Atlanta hospital," Lebovitz said. "It took many months and surgeries before he could return to his home in Akron."

Marsico treats skin cancers and he wanted to get back to his practice, Lebovitz said. Fortunately, his hands were not severely burned. He can't walk normally, but he has been able since 2009 to provide medical care to his patients.

Lebovitz said Marsico and Moran did not wish to grant an interview since the memory of the crash is painful. The trial lasted 2 ½ weeks.

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Record Number: MERLIN_11877756

THE OHIO TRIAL REPORTER

Your Essential Guide To Case Evaluation Since 1987

Plane Manufacturer Settles Claim Arising From Deadly Crash

Trumbull County

Court of Common Pleas – Warren

Case Caption:

Milisa K. Rizer, Administrator of the Estate of Franklin M. Rizer MD. v. Mooney Airplace Corp., et al.

Settlement: \$15,000,000

Judge: Andrew D. Logan

Settlement Date: 2/2008

Attorneys- Plaintiff:

James R. Lebovitz, Cleveland
Charles L. Richards, Warren

Attorneys- Defendant:

Paul V. Herbers, Kansas City, MO
James E. Ramsey, Kansas City, MO
Darrell A. Clay, Cleveland
Ralph E. Cascarilla, Cleveland

He was piloting a single engine aircraft manufactured and designed by Defendants Mooney Aerospace Group, Honeywell International, Inc., Honeywell General Aviation Business Corp. and Honeywell Business.

Defendant Winner Aviation provided various types of maintenance systems that operated the plane. Decedent, who was flying from Youngstown to Virginia, was on an instrument approach to Runway 17 at Leesburg Executive Airport on March 20, 2003. The plane crashed about 3/4 of a mile short of the runway in a heavily populated residential area in Vienna, VA. Reports indicated that the plane narrowly missed hitting a house. Decedent was killed in the crash. Garmin International, Inc. was dismissed from the case prior to mediation.

Plaintiff alleged the aircraft experienced catastrophic failure, including avionics and instrumentation failures, which caused the plane to crash and the failures were due to defects in the design and/or manufacture of the plane.

Defendants denied negligence and contended the plane crashed due to a fatal pilot error.

Plaintiff Profile: Plaintiff's decedent was a 49 year old married male employed as an otolaryngologist.

Alleged Injury: Blunt force trauma resulting in death. Plaintiff's decedent was survived by his wife.

Case Number: 2005-CV-00653

Editor's Notes: Information for this summary was obtained from other published sources as the attorneys were prohibited from discussing the case due to a confidentiality agreement. This story originally published on page 33 of The Ohio Trial Reporter Volume 23, Issue 2.

Facts: The Estate of a pilot whose plane crashed in a residential area alleged the craft's manufacturer was to blame for the fatal accident. Defendant maintained the pilot made errors that resulted in the fatal crash. The parties reached a \$15,000,000 settlement after a two day mediation.

Plaintiff's decedent, Franklin Rizer, M.D., was a 49 year old otolaryngologist. He was the first Ohio surgeon to perform a cochlear ear implant and was renowned in his field.



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\$7.4 Million Largest Ohio Plane Crash PI Verdict Flexibility, Hard Work – Key To Jury Decision

VERDICTS & SETTLEMENTS PLUS

In July of this year, a Cuyahoga County jury awarded a North Carolina man and his wife \$7.45 million for injuries the man received when a plane in which he was riding crashed into Lake Erie. According to the attorney for the couple, this is the largest aviation-related personal injury verdict in Ohio history.

Plaintiff John White had both of his legs and his spine crushed in the crash, has had to undergo numerous surgeries to try to repair the damage, and will never be able to resume the active lifestyle he once had, said his lawyer, Jamie R. Lebovitz of Cleveland. His wife, to whom he had only been married for several months at the time of the accident, quit her job so that she could stay at home and care for her husband.

The couple sued the estate of the pilot of the plane, who died in the crash, as well as the pilot's company, which owned the airplane, and the trustee of a family trust that was created after the pilot's death. The insurance company that had insured the plane, while not a defendant, was convinced by the defendants to contribute money towards paying the verdict.

The case, *White, et al. v. Estate of Derrick, et al.*, was heard before Common Pleas Judge Nancy Russo in July. The week long trial only concerned the issue of damages, however, because the issue of the pilot's li-

ability had been determined on a motion for summary judgment. The unanimous verdict included \$6.43 million for the husband's damages and \$1 million for the wife's loss of consortium.

Counsel for the defendants, George Hilborn of Michigan, and Margaret Meko of Cleveland, could not be reached for comment.

Choice Of Defendants

A critical decision was made at the outset of the case to sue not only the estate of the pilot and the pilot's business but also the family trust of the pilot, Lebovitz explained. "Because of the quantum of damages sustained by my clients, I felt that we had to sue not just the owner of the aircraft in terms of the [insurance] policy - since there were going to be other people making their claims on that money - but we also felt we had to bring the trust in as a defendant so that any deficit in the insurance coverage could be paid by the estate of the deceased pilot, assuming he was at fault," Lebovitz explained.

As it turned out, he continued, "we were able to recover full damages because the [trust] had monies above and beyond the coverage."

The insurance company, which was not a defendant to the case, allegedly offered \$500,000 to settle the case prior to trial. "Once the verdict was returned and we got well beyond the available insurance coverage" said Lebovitz, "the lawyers who represented the trust ... threatened a bad faith action

against the insurance company for putting the trust at risk of being depleted [and] forced the insurance company to contribute money towards the settlement so as to save the trust from any exposure."

Pilot Negligence

The plaintiffs based their case on their belief that the crash was caused by pilot error, said Lebovitz. They produced evidence indicating that the pilot was probably trying to navigate by looking out the window rather than by looking at his instruments, which was negligent under the conditions that night.

The plane took off after sunset in a westerly direction before making a northward turn. Because it could be difficult to distinguish the horizon from the lake under those conditions, it would have been necessary for the pilot to use the instruments to gauge altitude, the plaintiffs surmised. "The standard instrument departure when you're taking off to the west on runway six is to climb about 1500 feet and then make your right towards



Jamie R. Lebovitz of Nureberg, Paris

Canada,” explained Lebovitz.

In this case, the pilot made his turn after climbing only a few hundred feet and as a result, was “flying into a black hole,” said Lebovitz. “Had the pilot been paying attention to his instruments, ... he would have seen that he was falling below the horizon and was descending toward the lake,” he remarked.

The plaintiffs presented the testimony of a commercial pilot who had been talking with the plaintiff and his friends prior to takeoff and had taken off a few moments after they did.

“He testified about the flight conditions and that there was no way you could have flown safely out of Burke [Airport] that evening unless you were watching your instruments because there were no visual references for a pilot to be able to ascertain where he was in space,” said Lebovitz.

The defendants also raised several affirmative defenses, including the Ohio aviation guest statute. The plaintiffs challenged the guest statute as unconstitutional and prevailed after pointing out that a Ohio Supreme Court case, *Primes v. Tyler*, struck down the corresponding automobile guest statute in 1995.

The defendants also raised the affirmative defenses of comparative negligence and assumption of the risk, said Lebovitz, claiming that because there was some evidence that the pilot had consumed alcohol, the plaintiff was comparatively negligent for getting into a plane with him.

“We proved that [the restaurant] where they had brunch that morning ... [doesn’t] serve alcohol until 1:00 in the afternoon because of their liquor license prohibitions. By 1:00, these people were at the Rock and Roll Hall of Fame, ... and there was no testimony that they had anything to drink [there],” he noted.

After striking the defenses, the plaintiffs filed a motion for summary judgment on liability. Since examination of the wreckage and other evidence showed no indicia of an emergency on the plane, such as a power failure or fire, and the survivors’ testimony seemed to indicate that the pilot did not realize that he was descending into the lake until it was too late, the court accepted the plaintiff’s explanation and granted summary judgment on liability.

Contributing Factors

Lebovitz attributes the large verdict in part to the fact that the plaintiffs were

sincere and believable, and in part to the fact that their loss was so severe.

“This is a young couple, ... who within a couple of months of their wedding day, found their lives to have been irreparably damaged. Their hopes and their dreams of having a family and partaking of family life like they were accustomed to ... were essentially shattered. That is a very important issue in the case and the jury believed this. They found the plaintiffs to be very genuine,” said Lebovitz.

“If these were folks who didn’t seem very sympathetic and didn’t seem to really care about one another, you wouldn’t see a loss of consortium award of over a million dollars,” he added.

Another key element in the plaintiffs’ success in this case was preparation by the attorneys, which started the day they were retained and continued through the trial a year and a half later.

“This was not a case that was let to develop on its own—we worked it. There probably wasn’t a day that went by that we weren’t doing something in connection with this case,” Lebovitz remarked.

Flexibility was also a contributing factor in the success of the case. Lebovitz explained that during trial, he and his co-counsel decided to deviate somewhat from the detailed trial plan they had devised.

They had mapped out beforehand the witnesses they wanted to testify, including family members of the plaintiffs, every physician who treated the plaintiff, and the two fishermen who rescued the plaintiff from the lake, but decided to scale back some of the witnesses to avoid cumulative evidence.

“We found that those witnesses who were testifying were convincing, were very detailed, and commanded the undivided attention of the jurors, so we decided to pull some of the witnesses out.... We found that less ended up being more,” Lebovitz observed.

The testimony of one of the fishermen who saved the plaintiff was particularly riveting and dramatic, said Lebovitz.

Damages

In addition to testimony, he also relied heavily on demonstrative evidence. For example, using a *Fantozzi* chart (named for an Ohio Supreme Court decision, *Fantozzi v. Sandusky Cement*), Lebovitz “broke down on a big board the various elements of damages and what we believed to have been a fair amount of money to compensate the family for their loss.”

For economic damages, the numbers were reached through expert testimony by an economist and a vocational expert. “Someone who showed potential of making \$60,000 a year will be lucky if he can make \$30,000 in some other type of job that is sedentary, because he won’t be able to work on his feet or lift heavy objects any more,” he explained.

The numbers for non-economic damages were arrived at through a combination of experience and instinct, said Lebovitz. “One of the arguments I made to the jury [was]: ‘[imagine] that you pick up the classifieds ... and there’s a job available: wanted, 35-year old person, both legs crushed, spine crushed, scars and burns, unable to walk on uneven surfaces, unable to play sports with children, unable to sleep but maybe two hours on any given night, in daily pain and discomfort, no time off for holidays, no vacation from any of these problems. We will pay you \$200 a day for that job.’ And my point was, would any one of you [take this job] or recommend to someone this job?”

Multiplying that figure of \$200 by the plaintiff’s life expectancy, which was not reduced at all by his injuries, yielded a figure of several million dollars, said Lebovitz. He also noted that the verdict covered emotional injuries relating to the crash. In particular, the plaintiff suffered post-traumatic stress disorder because a 12-year-old passenger on the plane was clinging to the plaintiff but the plaintiff, who was severely injured himself, could not prevent the boy from drowning.

“When you add up all the numbers, it came out to be about eight plus million dollars and the jury awarded just about everything I asked for,” Lebovitz concluded.

Jury Composition

When selecting the jury, important qualities were open-mindedness and fairness, said Lebovitz. “With the tort reform movement out there and the anti-plaintiffs attitude among many, you just want to be very careful about not having someone who thinks that anyone who is filing a suit is looking for a quick buck.”

According to Lebovitz, defense counsel felt they had picked a jury that would be advantageous to their side because there were five women on the jury. “Women, the belief is, tend to be a little more conservative with compensatory damages, [but] that was proven to be just the opposite,” he explained.

Reaching for the Sky

Lawyer Jamie Lebovitz
won't let families of
air-crash victims settle for
less than their due.

BY ERICK TRICKEY

Jamie Lebovitz pulls out a thick black book. Titled "Estate of Robert Milne, crash of Swissair," it tells the life story of a man who died in a 1998 plane crash in Nova Scotia. School records, professional publications, and testimonials are laid out next to family photos. In one, Milne poses with his wife on vacation in Greece.

This is no mournful remembrance by a family racked with grief, but a weapon in a high-stakes lawsuit.

Lebovitz is one of a few dozen air-crash lawyers in the country. He has represented the families of victims of such notorious disasters as the 1996 TWA crash near Long Island and the EgyptAir crash near Nantucket in 1999.

His thin face, with dramatic blue eyes,

has stared out of *USA Today* and *Forbes* magazine; reporters nationwide ask him to explain the legal battles that follow a crash. When Boeing announced its move from Seattle to Chicago, Lebovitz practically salivated in print over the chance to sue in Chicago's Cook County, where juries are famous for multimillion-dollar verdicts. And soon, he may find someone to sue for the biggest air disaster of all, the September 11 terrorist attacks.

Turning disaster into cash is Lebovitz's job. That's where the book about Robert Milne comes in. His law firm created it to wring the most money possible out of Swissair.

The book is meant to "bring the person to life for us," he says. "What has his passing done [to this] family?"

Since the legal system puts dollar values on emotional suffering, it's up to Lebovitz to show how much the family has suffered from its loss. Companies who don't want to take a tearjerker case to a jury will offer a generous settlement. Lebovitz gets a 20 to 25 percent cut.

He sees himself as a defender of the suffering, not an ambulance-chaser of the skies. "I consider myself a caring, compassionate person...My place is helping people out; [changing] a very, very terrible situation for the better."

He has handled air crashes since 1985, when he represented the family of an Ohioan who died in a crash in Newfoundland...Now, he's a partner with the prestigious Cleveland firm Nurenberg Paris. From his spacious office, where airplane models perch atop a table and bureau, he looks down at Ontario Street through a wide, marble-arched window.

Lebovitz has become one of the country's top air-crash attorneys because he pursues grueling cases as far as they will go, says Chicago aviation attorney Don Nolan. A lot of lawyers will settle early, Nolan says. "I've seen lawyers that, when they're offered a million dollars, that's the largest sum of money they've ever been offered. They're quick to take it."

Not Lebovitz. After a USAir flight went down near Pittsburgh in 1994, he slogged through dozens of depositions and threatened to take Boeing, which built the plane, to trial. On the trial date, Lebovitz accepted an offer of about \$7 million for his client — much more than most victims' families got, Nolan says.

Jamie Lebovitz: One of the country's top air-crash attorneys.



After Anita Bell's son died in the Swissair crash, 40 lawyers sent her packages. Once, trucks from Federal Express, UPS, and Roadway Express created a traffic jam in her driveway. An attorney friend sorted through the pile and chose three lawyers to interview.

The Bells hired Lebovitz because he projected compassion as well as business savvy. As the case dragged on, he called Bell every time another plane crashed somewhere, knowing her son and the case would be on her mind. "Jamie will be a friend to this family for life," Bell says.

Todd Peters, who lost his father in the USAir crash, says his family sought out Lebovitz after reading about him. They hired him because he spent a whole day talking to Peters's grieving mother, putting her at ease. "The first couple of [lawyers] we met at our house seemed kind of greedy and wanted us to sign a contract." But Lebovitz "seemed sincerely concerned with us."

Lebovitz pursued their case for almost three years and won a settlement of nearly \$3 million.

The money "makes you comfortable and gives you a sense of protection," Peters says. But as for giving the family closure, "it doesn't help even an iota. It keeps reminding you of why you have this money." Sometimes it seems like "blood money," he says.

Lebovitz targets those responsible for spilling that blood. In the USAir case, he and other lawyers charged that Boeing knew its 737s' rudders could spin out of control, but didn't warn airlines. In the case of an Alaska Airlines jet that fell into the Pacific Ocean last year, he says the plane wouldn't have crashed if the airline had heeded an inspector's warnings to replace a worn-out part in the plane's tail.

Now, Lebovitz is looking for culpability in the September 11 attacks. He's mulling over whether the Federal Aviation Administration could be sued for not responding faster to the first signs of trouble after the hijackings. He's thought about suing Osama bin Laden or Afghanistan, trying to tap al-Qaida and Taliban assets frozen in banks around the world. And he's considered suing over possible security failures.

Such speculation infuriates Washington, D.C. lawyer Mark Dombroff, a frequent adversary of Lebovitz's. Dombroff, who has represented USAir and Alaska Airlines, says Lebovitz is a worthy adversary, reasonable and moderate, not the type who recklessly sues everyone in sight.

Dombroff says it's unfair to expect flight controllers to have realized the hijackers would use the planes as weapons. "Nobody at that time perceived that as a threat."

Plaintiffs' lawyers have to ignore their usual impulse to find someone to blame, he says.

But Lebovitz says past terrorist attacks on airlines, and incidents where crazies broke into pilots' cabins, should have led to increased security on planes.

For now, Lebovitz and other crash lawyers are holding back. Most members of the American Trial Lawyers Association have so far respected its moratorium on suits over the attacks. Meanwhile, Congress has set up a fund victims' families can tap.

Lebovitz is skeptical about the fund. Under tentative rules, families who apply to it not only give up their right to sue; they can't appeal the amount the government gives them. Any life or accidental death insurance the victim had will be deducted from what the fund pays out. And the government is considering using mathematical formulas to determine what victims' future earnings would have been, instead of computing each person's potential wealth with the help of economists, as lawyers do in court cases.

Some people will take the government's money, but others will sue, Lebovitz predicts. It depends on how soon they need the money, what insurance they had, and how mad they are.

Several dozen relatives of attack victims have called Lebovitz for advice. The calls are igniting his zeal to punish anyone whose mistakes contributed to the disaster. He's furious, for example, that, in early November, a man got through airport security in Chicago with several knives, indicating that security is still not what it should be.

Not everyone believes it's fair to point fingers in court after an act of war.

"I think it would be an indescribable injustice for anybody to be sued as a result of September 11, other than the terrorists," says Dombroff.

Even Todd Peters, whose father died in the USAir crash, isn't sure. "I don't know if we should be punished for things that are an accident ... It just doesn't seem businesslike to me, [or] fair."

But others will be like Anita Bell, whose successful lawsuit gave her one small consolation after her son's death. "Maybe we had hurt Boeing. Maybe we'd hurt some of these people, Swissair, for what they did. We weren't being revengeful. We just wanted them to know we weren't going to stand for this."



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Reports detail crash nightmares

Accident reports by the National Transportation Safety Board read like a horrifying guide for how not to fly.
See Page 7

COVER STORY

Surge in crashes scars air ambulance industry

By Alan Levin and Robert Davis, USA Today



Jerry Leonard

The helicopter flight to take heart patient Jerry Leonard from one Indiana hospital to another should have been routine.

But on the night of the trip, April 20, 2004, the pilot on the Air Evac Lifeteam air ambulance apparently forgot to adjust the

helicopter's altimeter, federal records show. When he slammed the helicopter carrying Leonard into a hillside near Boonville, Ind., the cockpit gauge showed he was 310 feet off the ground.

"Boy, I screwed up," pilot Richard Larock told an emergency worker who responded to the crash.

Larock and two medical workers survived, but Leonard – 63 years old and strapped to a gurney – was flung from the helicopter, the stretcher strap forced against his throat. "It took 10 minutes for him to strangle to death," says his son, Keith Leonard.

The flight that was supposed to help save Leonard's life killed him instead.

A deadly trend of pilot errors, industry carelessness and poor government oversight has driven the number of air ambulance crashes to record levels.

Since 2000, 60 people have died in 84 crashes –

more than double the number of crashes during the previous five years. During that period, more than 10% of the U.S. air ambulance helicopter fleet crashed. If commercial airlines lost the same proportion of large passenger jets as air ambulance companies lost helicopters, 90 airliners would crash each year.

Despite the surge in the number of crashes, however, air ambulance companies and the federal agency that oversees them failed time and again to take steps that might have averted tragedy and saved lives, a USA TODAY investigation shows.

The newspaper reviewed hundreds of pages of documents and interviewed dozens of pilots, aviation experts, federal officials, and executives

***"This isn't search and rescue,"
says Jamie R. Lebovitz, of Cleveland Ohio,
the aviation lawyer representing the Leonard family.
"This is transport and kill."***

with the companies that operate the flights. Because government statistics on air ambulance crashes are sparse, USA TODAY also created its own database of 275 accidents since 1978.

Unlike passengers on commercial jets, the people being transported by air ambulances – many critically ill or injured in accidents far from hospitals – had no choice but to make the flights.

The crashes that killed them often involved egregious errors by pilots and crew. In one case, a helicopter carrying an 11-day-old child and her mother slammed into the side of a mountain at night. In other crashes, pilots flew into thick fog even after other air ambulance pilots had refused to fly.

“This isn’t search and rescue,” says Jamie R. Lebovitz, of Cleveland Ohio, the aviation lawyer representing the Leonard family. “This is transport and kill.”

The newspaper’s investigation found that:

- Industry safeguards are so lax that pilots have repeatedly caused accidents by knowingly flying into bad weather, failing to check weather conditions or otherwise violating federal or company regulations. In at least 17 cases since 1995, pilots crashed after flouting fundamental flight rules.
- Despite at least nine crashes since 2003 in which a disoriented pilot flew into the ground, federal regulations exempt helicopters from some of the most basic safety standards and equipment required for commercial airlines, including devices that warn pilots when they get too close to the ground.
- Government inspections of air ambulance operations, a process critical to holding companies accountable for safety, are haphazard and inadequate. A draft report by a Federal Aviation Administration task force that studied the crashes last year concluded that inspections are “hit-or-miss” and that some accidents were “partly attributable” to poorly trained inspectors. In three fatal crashes last year, FAA inspectors had never visited helicopter bases to check pilot credentials, maintenance records and other documentation, steps crucial to ensuring safe flight.

Dueling viewpoints

Some medical studies also question the need for many air ambulance flights. A 2002 study in *The Journal of Trauma* found that helicopters were used “excessively” for patients who weren’t severely injured, and often didn’t get patients to the hospital faster than ground ambulances.

One possible explanation for the alleged overuse: profit. Air ambulance firms receive roughly \$7,500 per flight from insurance companies or Medicare.

But industry leaders cite other studies to show that thousands of lives are saved each year by speedy flights to hospitals – far more than are lost in crashes. A study this year in the *Air Medical Journal* found that states with better air ambulance coverage tended to have lower highway fatality rates. “We do this because there are benefits,” says Tom Judge, president of the Association of Air Medical Services, the industry’s trade group.

Pilots sometimes find themselves in particularly trying situations. Despite darkness or bad weather, they may be summoned to accident scenes. They aren’t supposed to take off in poor conditions, but their decision whether to fly could mean life or death.

“I don’t know anybody in this industry who isn’t dedicated to safety and dedicated to what we do,”



says Ron Fergie, president of the National EMS Pilots Association.

FAA and industry officials say they are moving to improve safety. Among the steps: encouraging companies to buy night-vision goggles, which allow pilots to see hazards in the dark, when the majority of crashes occur.

The FAA also has worked with companies to develop procedures to help pilots decide whether to stay on the ground in dangerous conditions. The agency pledges to review safety standards at every air ambulance company this summer. And industry trade groups say many companies are improving training without waiting for mandates by the FAA.

“We take this very seriously,” says Jim Ballough, who oversees the FAA’s safety effort. “The public will see change.”



But in the face of industry concerns about cost, many of the most promising safety enhancements

The family “believed that this air ambulance, with a pilot and paramedic and nurse, were going to provide him with state-of-the-art care and deliver him safely to a hospital,” says Lebovitz, the family’s lawyer,

have not been required. Flight regulations have not been rewritten. The FAA hasn’t followed key safety recommendations it received from its own task force last December. And though safety reviews of companies are planned, Ballough concedes the agency still lacks a system to ensure that all air ambulance bases – especially those located far from their companies’ headquarters – are inspected.

In interviews, the FAA offered no explanation for why it failed to act earlier or devote more resources to monitoring the air ambulance industry. But the upswing in crashes occurred as the agency faced growing pressure to tighten oversight of large airlines after the crashes of a ValuJet flight in Florida in 1996 and an Alaska Airlines jet in California in 2000.

The failure to act, by the industry and the government, is “almost criminal,” says Vernon Albert, a former air ambulance company flight director who is now a safety consultant. “Someone needs to be uncomfortable,” Albert says, “and not the guy riding in the back of the helicopter.”

‘We don’t know what happened’

When Jerry Leonard was killed as a result of the Boonville, Ind., crash last year, “it was just like somebody driving a knife through your heart,” Keith Leonard says.

The Leonard family had driven to Deaconess Hospital in Evansville, Ind., to meet Leonard, who was having heart problems. He was being airlifted there from a hospital in Huntingburg, Ind., 40 miles away. Leonard

never arrived.

The family “believed that this air ambulance, with a pilot and paramedic and nurse, were going to provide him with state-of-the-art care and deliver him safely to a hospital,” says Lebovitz, the family’s lawyer.

“And the company violated that trust. They breached that trust.”

Air Evac declined to comment on the accident, but spokeswoman Julie Heavrin says the company has taken several actions to improve safety, including buying a helicopter flight simulator for training.

Across the industry, however, mistakes by pilots remain the cause of the overwhelming majority of crashes. The newspaper’s analysis of almost 30 years worth of accidents shows that 82% of fatal crashes were caused by human error – almost all by pilots.

In 2000, the air ambulance trade group called on the FAA to push companies to emulate the type of training used by airlines to minimize mistakes. Known at airlines as “Crew Resource Management,” the training teaches pilots to listen to

concerns from other crewmembers and to monitor themselves for factors such as fatigue and tension.

In July 2000, an industry committee suggested language for such a training program and sent it to Jane Garvey, the FAA's administrator at the time, says J. Heffernan, an air ambulance company official who headed the effort.

"We don't know what happened after that," Heffernan says.

Some companies went ahead with the training program, but it was never endorsed or addressed by the FAA. Agency spokeswoman Alison Duquette says the FAA found no record that it even received the industry's recommendations.

No one can say for sure whether the industry's suggested safety program would have prevented air ambulance crashes if it had been instituted industrywide. But similar programs at airlines are credited with reducing accident rates.



Today, about five years and dozens of crashes after the industry first proposed the safety program, the FAA is preparing to formally endorse it.

A proposal within the FAA to gather more data on how many hours air ambulance firms fly also went nowhere. As a consequence, tracking the accident rate – that is, how often air ambulances crash compared with the number of flight hours – remains impossible.

The collection of more and better data about

accidents is the basis for taking steps to improve safety, says Michael Barr, lead instructor for the University of Southern California's aviation safety program. "If the government wants to make any kind of rule changes, they have to base that on hard data," Barr says. "They need to show that there is a need and make it a factual presentation, not an emotional one."

In a statement in response to the newspaper's questions, the FAA says it doesn't need to track the hours of air ambulance flights. "We know the causes for these accidents and know what intervention strategies are needed," the statement says.

The air ambulance industry has stopped waiting for the FAA to act. It now has begun gathering that flight information itself.

'Safety layers don't exist'

Pilot Craig Bingham knew the weather was bad

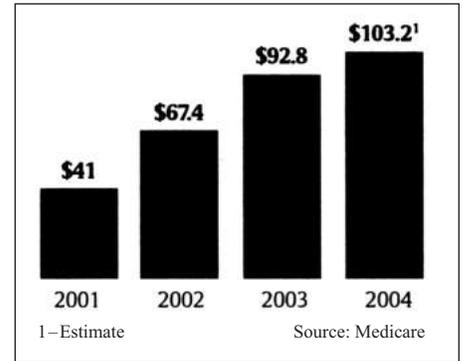
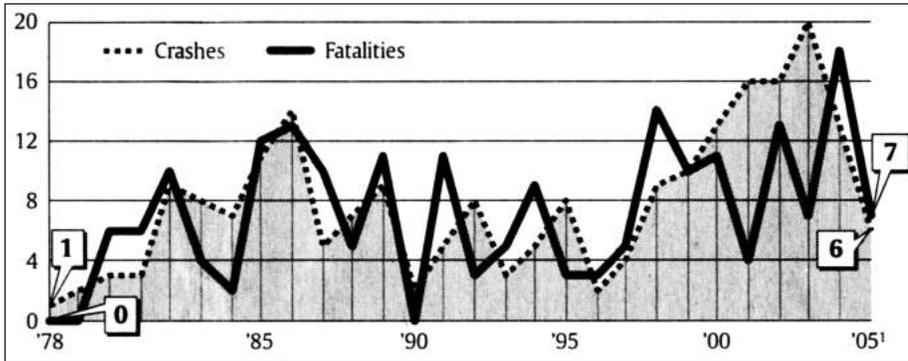
on Jan. 10, 2003. Fog had reduced visibility to one-sixteenth of a mile in parts of Salt Lake City. A pilot from another air ambulance firm had even called to warn him against flying, federal records show.

But Bingham took off anyway, hoping to rescue a motorist injured on the highway.

The veteran pilot apparently became disoriented in the fog and crashed into a field, federal records show. The accident killed Bingham and a paramedic. A flight nurse was severely injured.

The unique mission of the air ambulance industry has contributed to the difficulty of preventing crashes.

Unlike charter or airline flights that go into airports, air ambulances land on hospital roofs or, worse, by the sides of rural roads at night. And instead of delivering anonymous airline passengers, air ambulance pilots are charged with helping save lives. That mission can prompt pilots to press on in conditions when others might turn back.



“Most of the accidents will say ‘pilot error.’ It’s not so simple, really,” says Eileen Frazer, executive director of the Commission on Accreditation of Medical Transport Systems, a non-profit group that conducts safety audits of air ambulance firms. “There are all sorts of extenuating circumstances.”

Airlines and safety regulators have conducted a decades-long battle against pilot mistakes by improving training, oversight and technology. The combination has led to the safest period in commercial aviation history.

But almost none of those improvements have been applied to the air ambulance industry:

- About two-thirds of fatal air ambulance crashes occur in poor visibility, the newspaper’s analysis shows. Even so, pilots are not required to have special training about what to do when they encounter fog, snow or darkness.
- Air ambulance pilots need not obtain a weather report for their destination if they are not carrying a patient. Similarly, FAA rules that restrict how many hours pilots may work do not apply to flights without a patient.
- Helicopters are exempt from the federal rules that require data recorders on most planes that carry people for hire. The lack of these recorders in air ambulance helicopters makes it more difficult to determine what caused accidents – and to prevent future crashes.

Patrick Veillette, a former emergency medical pilot who has written several studies of air ambulance accidents, says the lack of emphasis on safety regulations, equipment and training is “setting the pilots up.”

Veillette now flies a business jet. He says the contrast between that type of flying and the air ambulance world is stark. In a jet, air traffic con-

trollers guide him away from hazardous conditions. His cockpit is equipped with the latest safety devices, including one that sounds an alarm if he strays too near to the ground. A company dispatcher won’t allow him to take off unless conditions are safe.

For the air ambulance industry, “these multiple safety layers don’t exist,” he says.

Inspections ‘hit or miss’

No one was seriously hurt on Aug. 31, 2002, when an Air Methods Inc. helicopter clipped a parking garage as it tried to take off at Miami Children’s Hospital.

But an investigation of the accident revealed the lack of oversight that occurs at many air ambulance bases, particularly those far from company headquarters.

The FAA had never inspected the helicopter operation because it was new, the National Transportation Safety Board found. Construction at the hospital had rendered the heliport dangerous, but the hospital had never told state and federal officials of the changes.

And even though flying into the hospital was tricky, Air Methods had not provided the pilots any special training, the copilot told NTSB investigators. The copilot, who wasn’t named in the NTSB’s accident report, said company managers told him they knew it was “tight in there, but to deal with it since they needed the work.”

Air Methods CEO Aaron Todd says the company would “never accept a contract” that it could not perform safely.

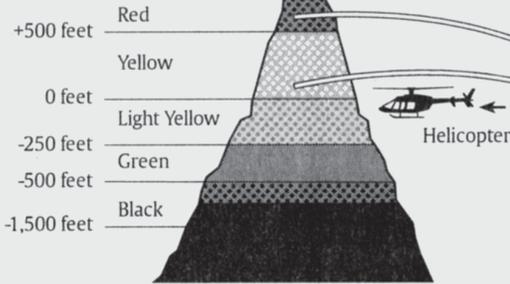
Regardless, the case illustrates how FAA inspectors have been unable to keep up with the dramatic growth in the air ambulance industry.

Warning system can keep a pilot above danger

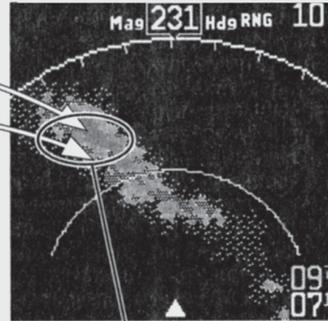
On Aug. 21, 2004, an air ambulance helicopter slammed into a mountainside near Battle Mountain, Nev. The pilot apparently failed to see the rugged terrain on a moonless night. All five people aboard died. Unlike commercial airliners, air ambulances

aren't required to have systems that would have seen and heard if the helicopter had had

Feet above or below helicopter altitude



Honeywell's Enhanced Ground Proximity Warning System uses global positioning satellites to determine the aircraft's position and altitude. A computer tracks obstacles.



Red and yellow

90 seconds before impact

A screen in the cockpit displays dangerous terrain in shades of yellow and red. Long before he was in danger, the pilot could have seen that he was approaching a ridge with peaks rising above his altitude.



Bright yellow

35 seconds before impact

As the helicopter got too close to the ridge, a recorded voice would have issued a warning: "Caution, Terrain." The screen also would have highlighted the dangerous terrain in bright yellow to get the pilot's attention.



21 seconds before impact

If the helicopter had had a warning system, it would have issued a "Warning, Terrain." The screen also would have highlighted the dangerous terrain in bright yellow to get the pilot's attention.

Air ambulance companies have expanded rapidly since the late 1990s as firms began competing in urban areas and demand for air ambulance services surged in rural areas where hospitals had shut down.

The industry's trade group estimates that, since 2000, the number of air ambulance helicopters has climbed 50%, from 500 to about 750. The average number of crashes climbed even faster, from about five per year during the early and mid 1990s to more than 15 per year since 2000 – a 200% increase.

After investigating three of the worst air ambulance crashes last year, two involving Med-Trans Corp. helicopters, the NTSB found that FAA inspectors had never visited each of their local operations.

The NTSB is investigating pilot decisions in all three accidents, says Jeff Guzzetti, who oversees the NTSB's air ambulance crash inves-

tigations. Eleven people died in the crashes, including two patients and the mother of one patient.

In one case, a Med-Trans crew flew to a roadside accident in South Carolina on July 13, 2004, after three other crews declined the mission because of bad weather. In another crash, a preliminary NTSB



...rn pilots when they get too close to the ground. Here's what the pilot would have
...d such a system:



investigation shows that a pilot flew into a storm near Peyote, Texas, on March 21, 2004, after failing to check the weather, Guzzetti says.

Med-Trans spokesman Reid Vogel calls the company's crews "highly skilled" and committed to safety.

A rapidly growing company based in Bismarck, N.D., Med-Trans has 12 helicopter bases around the country. But the only FAA inspectors assigned to monitor the firm were based in Arizona, near one of the company's bases.

"The safety board investigators are interested in the adequacy of FAA oversight of air ambulance companies, especially ones which conduct operations all over the country, but have one FAA office responsible for oversight," says Guzzetti. The NTSB plans to release a study of the industry later this year.

Linda Goodrich, vice president of the Professional Airways Systems Specialists, the union that represents inspectors, says staff reductions and budget cuts have made it increasingly difficult to inspect air ambulance operations.

EXCLUSIVE

Reports detail crash nightmares

Accident reports by the National Transportation Safety Board read like a horrifying guide for how not to fly.

Among the crashes:

On March 10, 2000, a pilot charged with taking a sick infant to a Texas hospital lifted off in fog so thick that an ambulance driver and others on the ground quickly lost sight of the helicopter. The pilot's employer, Temsco Helicopters Inc., forbade flying in such conditions, which require instruments to navigate, according to the NTSB. The pilot had only one hour of instrument experience. The helicopter crashed less than a mile away, killing all four people aboard.

On Aug 26, 2002, medical workers on a Rocky Mountain Helicopters mission fled a burning helicopter after a crash landing without evacuating the patient – a baby with respiratory problems. The pilot had landed on a highway in Bradenton, Fla., after the helicopter's engine caught fire. The pilot and three medical crewmembers fled. The pilot told investigators that he saw the baby after returning to fight the fire, and he rescued the child.

On July 13, 2004, a Med-Trans Corp helicopter flew to a highway accident in Newberry, S.C., after three other helicopter companies turned the job down because mist and fog blanketed the area. Seconds after taking off with the patient, the helicopter struck nearby trees and crashed. All four people on board died.

On Aug. 21, 2004, an Access Air Ambulance flight carrying an 11 day-old infant and her mother to a Reno hospital slammed into a mountainside in a remote area of northern Nevada. The pilot was following a well traveled route over a mountain range on a moonless night but did not climb high enough. All five people aboard died.

On Oct. 20, 2004, a helicopter left Santa Rosa Beach, Fla., to pick up a patient at a hospital in De Funiak Springs, Fla., even though a nearby weather station reported low visibility, according to preliminary findings by the NTSB. The company, Metro Aviation, Inc., was not certified to fly in such conditions. After only two minutes, the pilot radioed that he was attempting to return because of bad weather. The helicopter crashed into a bay, killing the pilot and two medical workers.

– Contributing: Alan Levin

Limited number of inspectors

The number of employees whom the FAA classifies as inspectors is expected to fall from 3,600 to about 3,400 this year, the FAA says. And hundreds of those workers are assigned to FAA's Washington headquarters or are managers who do no inspections. FAA requests to add inspectors were turned down by the Bush administration. As a result, the agency focuses its resources on its biggest mission: inspecting large airlines.

The air ambulance industry, Goodrich says, "is at the bottom of the food chain."

In fact, the draft report by the FAA task force examining the crashes concluded last December that the agency's efforts to inspect some air ambulance operations were "a hit-or-miss proposition."

The FAA's Ballough says his department is trying to order more inspections of air ambulance firms. But at a time when the FAA's aviation oversight budget has been cut by \$25 million, or 5%, the agency can't afford to devote too many inspectors to this relatively small corner of the aviation industry.

"It's an issue of resources," he says.

The FAA task force also concluded that several fixes could improve safety. Its draft report called for mandating improved pilot training for handling poor visibility, tightening air ambulance rules to make them more consistent with those for small airlines, and making weather limitations more strict. All of the recommendations could be put in place quickly, without the lengthy process of writing new regulations, the report says.

But the FAA and the industry have stuck to voluntary enhancements, avoiding mandates that change rules and require better equipment.

Ballough says some rule changes will come, but he says the FAA must proceed cautiously to ensure it chooses the right solutions. The industry also wants to move slowly. In a letter to FAA officials in January, the industry trade group said that imposing costly new safety rules might put some operators out of business.

The industry, says safety consultant Albert, "is accepting a higher accident ratio than the other areas of the aviation industry. And I say it very bluntly: If they weren't accepting it, they'd be doing something about it, be it the FAA, the industry, the pilots or whatever."

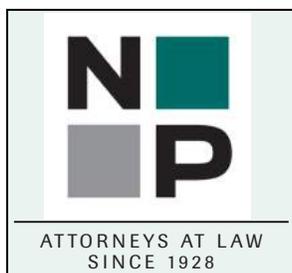
Richard Healing, an NTSB member, says air ambulance operators need to be especially vigilant about safety because accident victims and hospital patients usually have no choice whether to fly.

"My goal is to see that the helicopter community gets the same level of safety everybody else gets," Healing says. "It's clear that has not been the case in the past."

For Keith Leonard and others who lost loved ones in accidents, the damage cannot be undone.

"To this day, every time I hear a helicopter I tense up," Leonard says. "Just the sound of it takes me back to that night."

— Contributing: Marie Skelton and Paul Overberg



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The Long Nights of Mourning

A Journey with Grief after Sudden Loss

Written by Janis Ost Ford
Forward by Jamie R. Lebovitz

Summary

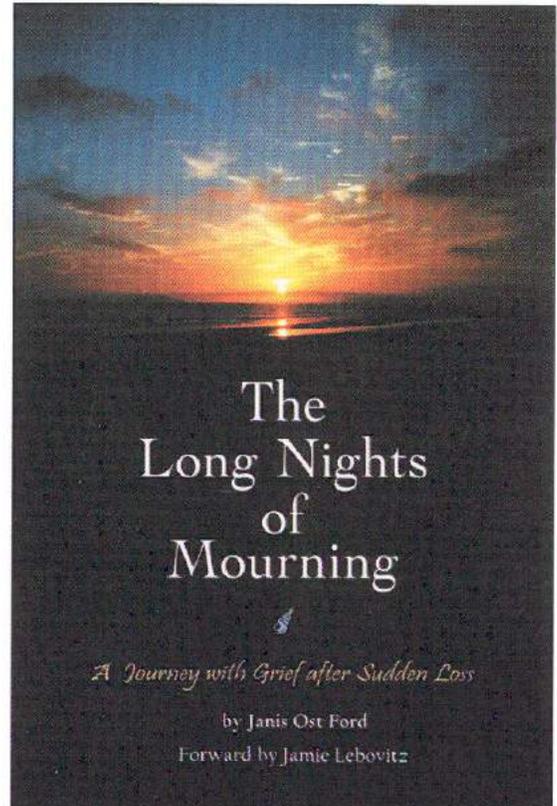
"The Long Nights of Mourning" is a testimony and grief journey after the crash of Alaska Airlines Flight #261 in January of 2000. The book is forwarded by Jamie R. Lebovitz, Esquire, (see other side) a prominent aviation attorney who was appointed by the Court as one of the lead counsel for Flight 261 victims' families. The book begins with the plane hitting the cold Pacific Ocean and plunges right into the author's heart, examining her life and taking the reader through an honest, but courageous and tumultuous three year journey. The author lost five family members in this crash, including her mother, her only sibling, and her four month old niece.

Janis Ost Ford tackles sudden loss, multiple deaths, the issue of hate and anger towards the airlines, holidays, good days, bad days, and the horrific task of sleeping when your heart is broken. Ultimately, Janis conveys to her readers that we all must try to find joy again, after a loss. And on a realistic level, we must surrender to the fact that life will never be the same, and our hearts will never stop hurting. The book comes with a beautiful music CD with acoustic guitar, piano, and singing that will lift the spirit. These are songs about healing, family and love by Santa Cruz locals Keith Greeninger, Niki Leeman and Jessica Turner. This book is a must for anyone who experienced the loss of loved ones, or for the people and specialists who will befriend them.

Author's Bio

Janis Ost Ford lives in Santa Cruz, California. She is an elementary school teacher and an advocate for safer planes. Twenty-five percent of the proceeds from this book go directly to NADA, National Air Disaster Alliance. Next to creative writing, her passions include folk music, cooking, teaching, and contemplating life from within a hot tub.

You can order a book through Janis Ost Ford directly by writing to her at Bromador@aol.com or P. O. Box 5332, Santa Cruz, CA 95063-53332. You can also order a copy by calling her distributor at 1-800-247-6553.



Forward by Jamie R. Lebovitz

On January 31, 2000, the lives of eighty-eight vacationing airplane passengers and their loved ones awaiting their safe return home were forever shattered. The mothers, fathers, children, grandchildren, siblings, spouses and friends of those tragically and inexcusably killed on Alaska Airlines Flight #261 came face to face with the horrible aftermath of an airplane crash; confronting such chilling details like dental records, DNA, blood tests, memorial services and ultimately funerals.

The joys of life, the laughter, the celebration, the unfulfilled dreams of the future were no more; having been replaced by tears, shock, despair, anger, emptiness and profound sadness.

Five members of a loving and happy family were gone in an instant, leaving behind their bereaved survivors. Now, when Janis Ost Ford sets the Thanksgiving day table there are five empty places. Janis lost her mother, her mother's companion, brother, sister-in-law and four month old baby niece in the crash of Flight #261. How can a family survive this horrific and sudden destruction of human life?

With the hope of dealing with sadness, anger, and shock in a healthy way, Janis wrote a book which is now in print. It is written for anyone who has experienced sudden loss. Janis takes her readers through the stages of grief, and ultimately decides for herself that she must somehow find acceptance and little joys in her life in order to survive.

In her book, "The Long Nights of Mourning," Janis Ost Ford gives the reader a rare glimpse into a family's struggle to survive - to "go on" with life. Not surprisingly, there is no way possible to "go on" and return to a state of normalcy. Survive - yes. But never as before.

When part of one's heart is torn away, it is impossible to be the same. This is a story of a family trying to return to some semblance of normalcy under the most tragic of circumstances one could ever possibly imagine. . . .

Aircrash disasters happen not because of some "plan" or "Act of God" - they happen solely because of misconduct on the part of airlines, airplane manufacturers and others. And most often, the causes are multiple in origin - careless maintenance; poorly and inadequately trained flight crews; defective design of systems which are supposed to protect passengers from in-flight component failures; failure of the government agencies to enforce rules and regulations intended to keep the skies safe and prevent airlines and others in the air transportation business from putting profits ahead of flight safety.

Fortunately, for families such as Janis', there is a Civil Justice system in the United States, unlike other countries, which allow families to hire aviation lawyers, like myself, to expose the wrongdoings of airlines, airplane manufactures and others and to hold them accountable to those who bear the consequences of their misdeeds. As a lawyer committed to bringing justice to families of aircrash disasters, it is my hope that with perseverance, persistence and patience, I, along with the families I represent, can influence airlines and airplane manufacturers in the way they do "business" and force the industry to do everything that is humanly and technically feasible to make absolutely certain that similar tragedies never happen again.

The loss of human life is intolerable. Misconduct on the part of airlines and airplane manufacturers can not and will not be tolerated. . . . Our system of justice can make a difference that will benefit the lives and safety of all people.

Janis' hope for those who are suddenly confronted with the loss of a loved one is that the surviving family members and loved ones discover peace from the memories, and solace knowing they are not alone.