

# De-mystifying Safety Culture

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## Safety, CEOs and the Law – Problem or Partnership?

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# Safety, CEOs and the Law – Problem or Partnership?

## Panelists:

- Roderick C. van Dam, Head Legal Services, EUROCONTROL, Brussels, Belgium
- Sean Gates, Gates and Partners, Solicitors, London, England
- Gerard Forlin, Barrister, Grays Inn Square, London, England
- Simon Foreman, Soulez Larivière et Associés, Paris, France
- Urs Ryf, COO, Skyguide, Switzerland
- Bogdan Donciu, COO, Deputy Director General, ROMATSA, Romania
- Massimo Garbini, COO, ENAV, Italy

# Initial Report

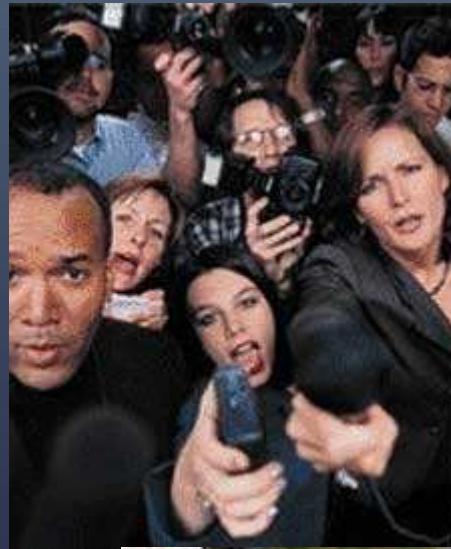
## BBC News Bulletin: Reports of a Ciao Bella airplane down over Carpathia, in the Balkans...

- It's 23 January 2009 at 10:45 p.m., GMT, BBC is reporting that a Ciao Bella flight en route from WBN to EBN has crashed near Carpathia, there are reports of survivors
- Passengers are Italian, French, Swiss, Romanian and British
- Italian flight crew
- French Flybus F-100 aircraft, US Avionics, British engines



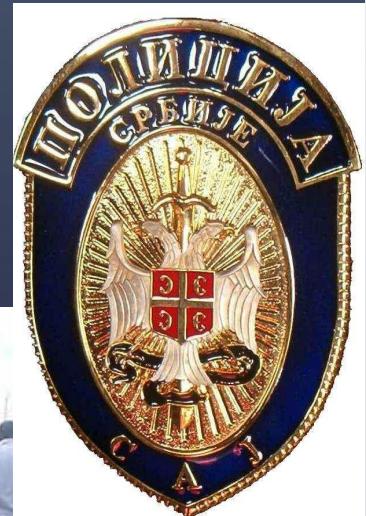
# Initial Questions: If you know your company or client handled the air traffic...

- What are your first steps?
- Do you retain local public relations advisors or counsel?
- What's the role of insurers in the early days?
- What's the role of the CEO in dealing with the media?
- How should an “involved” company respond to the media, government, and victims’ families?



# Update Report No. 1: The Scene of the Accident

- No unusual weather or visual meteorological conditions reported
- First Officer survived but is injured, 28 survivors
- Reports of an in-flight fire and explosion
- Acts of terrorism suspected
- Carpathia Special Anti-terrorist Unit (CAJ) called to the scene to aid in the investigation



# Accident Scene Questions

- How do you handle multiple jurisdictions in the wake of an emerging disaster?
- Do you make controllers or the flight crew available for questioning?
- Do you advise them of their rights?
- Do you offer individual counsel?



# Update Report No. 2: Second Aircraft Emergency Landing

- Reports indicate a Swiss made Hiatus PC-12 NG, single-engine aircraft made an emergency landing in Carpathia with its horizontal stabilizer sheered off
- Possibility of TCAS/ACAS alert signal and evasive maneuvers
- The PC -12 not equipped with collision avoidance systems
- Hiatus flight crew refusing to speak to investigators
- Local controllers refuse to speak with authorities, citing Skyguide prosecution



# Law Enforcement Arrives

**“We’re going to bring the perpetrators of this heinous act to justice” says Carpathian Interior Minister**

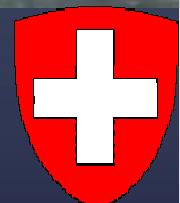
**IFALPA decries the, “lynching mindset of the public and prosecutors”**

- Although public outcry, no spokesperson from Ciao Bella, Carpathian ATC, or Hiatus speak publicly
- How do you respond to this media frenzy?
- Do you advise controllers, management, or flight crews to leave the country?
- How would you advise the Board of Directors and management of the airline and ANSP (versus the company generally)?



# Update Report No. 3: Multiple Criminal Probes Open

- France's Police Nationale, Swiss Federal Security Service and Italy's Carabinieri send investigators on site
- Conflicts arise among accident investigators and law enforcement while trying to preserve evidence
- Carpathia Interior Ministry takes multiple witness statements, requests passports of all controllers and flight crew, warning management not to go on holiday
- Law enforcement requests to “sit in” on interviews
- How do we deal with conflicting national jurisdictions, civilly and criminally?
- Should we agree to let multiple law enforcement agencies sit in?
- What's the line between egregious/reckless behavior and negligence?



# Insurance

- Airline/ANSPs covered by British/French insurers
- Employees request companies pay separate counsel in addition to union representation
- Will insurance pay for the cost of criminal defense or penalties?
- What reservation of rights occur?
- Are punitive damages or criminal penalties “insurable?”
- How does accident report affect settlements or trials?
- How do you control damage to the “brand,” especially where insurers instruct not to discuss case or issue apologies anywhere, anytime?



# Update Report No. 4: Crew Interaction

- Local Carpathia citizen goes on television to report seeing Hiatus pilots at the local bar “Club Danube”. Mobile picture put on Facebook released all over Internet.
- Voluntary self reporting by surviving flight crew of Ciao Bella reveal persistent cultural problems among crew over execution of emergency management procedures
- Interviews suggest a vehement dispute between Captain and First Officer about immediately landing at an alternate airport following what appeared to be a mid-air collision



# Update Report No. 5: Conflicts with ANSP

- Incident reports regarding controllers reassigning cruise altitudes and descend clearances to a/c that lead to a number of serious near misses and loss of separation minima;
- Carpathian ANSP had proposed redesigned airspace/procedures, not yet formally in place
- Hiatus pilots were too distracted and failed to follow descend and maintain instruction to lower altitude



# Safety and Disclosure Questions

- Should the airline or ANSP consider hiring an independent safety audit team?
- How do concepts of just culture conflict with investigations?
- What can Boards of Directors and managers do to avoid or minimize risk of criminal liability?

# Subpoenas Issued

- Weeks later, Carpathia prosecutors issue subpoenas for testimony of the Ciao Bella and Hiatus flight crew, Carpathian ANSP management
- Months later, plaintiffs in civil lawsuits seek the turnover of all voluntary reporting by Ciao Bella, Carpathian ANSP, and access to controller/flight crew training and personnel files
- They seek to admit evidence in civil damage trials



# Carpathian Civil Aviation Directorate (CAD) Report Issued

Report asserts its probable and contributing cause findings:

- Ciao Bella for failing to train pilots properly on in-flight emergencies
- Ciao Bella flight crew for not immediately landing
- Carpathian ANSP management for poor safety oversight and failure to mandate collision avoidance systems in all aircraft, and failure to follow proper procedures
- Hiatus flight crew for failing to follow proper ATC instructions

# Indictments: 6 months after the crash

- Indictments for manslaughter are brought against Ciao Bella, Ciao Bella's surviving First Officer, the Hiatus pilots, and Carpathian ANSP
- Prosecutors seek to introduce all statements made to accident investigators and “cause” determinations
- Trial is scheduled in 6 months



# Criminal Defense

- How do you defend against the emerging concept of criminal liability based on, “reasonable expectations of management?”
- What are the range of penalties upon conviction?
- What “discovery” difficulties arise?
- What is the role of the victims’ families and the Internet in criminal investigations?
- What is the role of court appointed or party appointed experts?

# Discussion

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