

De-mystifying Safety Culture

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Safety, CEOs and the Law – Problem or Partnership?

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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 it's 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

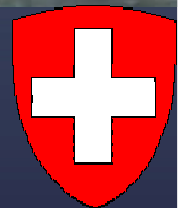
IFALPA decries the, “lynching mindset of the public and prosecutors”

- 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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