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## Crash Victims' Relatives Press Airline Claims

By JACK NICAS

A New York contractor whose daughter died in the 2009 crash of a [Pinnacle Airlines](#) Corp. plane has won a seat on the carrier's creditors committee, as victims' relatives from that disaster press their claims to potential legal damages cast into doubt by Pinnacle's bankruptcy filing.

Pinnacle's Chapter 11 filing on April 1 put a hold on the 23 pending wrongful-death suits against the airline from Continental Airlines Flight 3407, which was operated by Pinnacle unit Colgan Air and crashed near Buffalo, N.Y., in February 2009, killing 50. Pinnacle has settled 24 other claims stemming from the crash.



Associated Press

John Kausner, left, will represent the victims' families in the creditors group. Above: Mr. Kausner with then-Continental CEO Jeff Smisek in 2010.

Last week, the bankruptcy trustee in the case appointed John Kausner, whose daughter Ellyce was killed in the disaster, as a representative of the victims' families on a group of seven creditors who will negotiate with Pinnacle attorneys over the restructuring.

The bankruptcy filing increased the probability that victims' families won't fully reap the damages that they might win in those lawsuits. The lawsuits, meanwhile, have clouded the prospects of Pinnacle's emergence from bankruptcy. It had just \$45 million on April 1, and a punitive-damages ruling could reach tens of millions of dollars, said Justin T. Green, an attorney for several of the families.

Pinnacle's bankruptcy "puts the families in a tough position," Mr. Green said. "But at the same time, the [families'] claims pose a major problem for Delta, and for Pinnacle to come out of this bankruptcy."

In a statement, Pinnacle said lawsuits related to Flight 3407 "will be addressed in the course of our Chapter 11 proceedings." The airline, which cannot reject the claims via the bankruptcy process, said it cannot "speculate on how a punitive damage award will be treated and its impact on our reorganization."

[Delta Air Lines](#) Inc., which effectively loaned Pinnacle \$30 million to operate through the bankruptcy and depends on the commuter carrier for more than 1,000 flights a day, declined to comment.

Pinnacle flies to smaller cities in the U.S. on behalf of some of the nation's biggest airlines. The Memphis, Tenn., company sought protection from its creditors this month because it said its big-airline partners were squeezing it out of profits in their agreements.

A motion Pinnacle filed last week leaves the victims' families with a difficult decision: drop claims against Pinnacle and

take an easier route—for potentially less money—against its insurance company, or maintain its claims against Pinnacle and remain stalled in bankruptcy court for many months.

Mr. Green said many of the families are reluctant to remove their suits from bankruptcy court and seek damages only against Pinnacle's insurance company because they want to see Pinnacle punished for its actions relating to Flight 3407, the last commercial plane crash in the U.S. A federal report on the crash faulted pilot error, but also inadequate safety standards at the airline.

"We're really just interested in a judge saying they're responsible," said Mr. Kausner, the families' representative on the creditors' committee. "There's no money to replace my daughter. Would I take some satisfaction in driving them out of business? Yeah. There must be an airline that can do a better job."

It's unclear if Pinnacle's insurance would cover punitive damages. If a court applies the law in New York, where the crash occurred, Pinnacle's insurance may only cover compensatory damages. That would mean families would be unable to reap a potential award of tens of millions of dollars if they dropped their claims against Pinnacle, or if they keep their claims against Pinnacle and the airline liquidates, Mr. Green said.

If the families keep their claims against Pinnacle instead of its insurance, their suits will remain on hold in bankruptcy court, Mr. Green said. The bankruptcy judge could eventually adjudicate the lawsuits, or the airline could run out of money. "They've already waited three years for justice. Now they're looking at potentially another year, year-and-a-half delay," he said.

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