



Aviation Law Section

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Notes from the Chair

By: *Don Nolan, Chicago, IL*

Dear Section Members:

First, congratulations to 2003 Aviation Law Section Chair Douglas A. Latto on a successful year, and thank you to all of our members who provided valuable and insightful presentations at the 2004 Annual Convention in Boston. For those of you who could not attend, it was a well-rounded, dynamic program that covered demonstrative evidence and evaluating damages in mass tort litigation, discovery restrictions in the post-911 world, and evaluating the worth of aviation cases. The papers can be found in Volume II of the Reference Materials and are worth a look!

As 2004-2005 Chair, I am working with my staff and the executive committee to shape the 2005 CLE program, which we will present in Toronto on July 25, 2005. Response has been terrific and we expect to include some exciting presenters from the judiciary as well as aviation experts and our own members.

Before we get to Toronto, however, there is Palm Springs to consider. I hope that all of you will consider attending the Winter Convention, which kicks off on January 29, 2005. The Aviation Law Section will hold a business meeting and roundtable legislative update.

Finally, there is a legislative issue of which we should all be aware. The Volunteer Pilot Organization Protection Act (H.R. 1084) passed in the U.S. House this past September, but so far, ATLA has been successful in preventing its passage in the Senate. As you may remember, the Volunteer Protection Act of 1997 excuses volunteers, such as volunteer pilots, from negligence, but does not excuse from liability the organization that sponsored the negligent volunteer. H.R. 1084 would change all of that. Not only does the Act excuse volunteer pilots from liability; it also immunizes both non-profit and for-profit pilot organizations from accountability, no matter how grave the negligence. This Act is clearly unfair to victims, and we must help ATLA hold the line in the Senate. For more information, you may contact Sue Steinman, Michael Strautmanis or Dan Cohen at ATLA.

Enjoy the great articles inside this issue and have a wonderful holiday season!

Sincerely,

Don Nolan
Aviation Law Section Chair
Nolan Law Group
DJN@Nolan-law.com

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Newsletter Editor's Comments

By: Justin T. Green, New York, NY

I am proud to take over the position of Newsletter Editor from Victor Diaz and will make every attempt to continue his excellent work. Submissions for our next edition are due in early December and I will need them shortly after Thanksgiving. I thank you in advance for writing the great articles that I know we will read over the next year.

We have seen some important recent aviation law developments, including the Supreme Court decision in *Olympic Airways v. Husain*, 124 S. Ct. 1221 (2004). Husain stands for the proposition that an omission to act may constitute a Warsaw or Montreal Convention "accident." The failure to respond to the emergency is the unusual or unexpected event external to a passenger. We must capitalize on Husain; already, courts have limited its reach.

This newsletter contains two articles addressing the September 11, 2001 aviation litigation in New York. It will take years to know the impact that the September 11 ter-

rorist attacks will have on aviation law. Vince Parrett has written a thoughtful article that examines the potential impact. Jeanne O'Grady has written an excellent review of the Keane Commission Report.

I have included a short article highlighting four plaintiffs' successes in "GARA" cases. Obviously, the General Aviation Revitalization Act is something we all need to worry about and it is great to read that GARA can be beat.

The Newsletter also contains an e-Discovery Alert, authored by James E. Rooks, Jr. of the Center for Constitutional Litigation, which addresses the proposed new rules for the federal courts on electronic discovery.

Justin T. Green, Kreindler & Kreindler, 100 Park Ave., New York, NY 10017-5590, 212/687-8181, Fax: 212/972-9432, jgreen@kreindler.com

Contacting ATLA

ATLA General Numbers—800/424-2725 or 202/965-3500

Sections—ext. 290

www.atla.org/Sections

E-mail: sections@atlahq.org

Litigation Groups—ext. 306

E-mail: narecita.ibanez@atlahq.org

Membership—ext. 611

E-mail: membership@atlahq.org

Meetings & Conventions—ext. 613

E-mail: conventions@atlahq.org

ATLA Education—ext. 612 or 800/622-1791

www.atla.org/education, E-mail: education@atlahq.org

ATLA Exchange—ext. 615 or 800/344-3023

www.exchange.atla.org

E-mail: exchange@atlahq.org

This Section Newsletter is intended to be a forum of opinion and information pertaining to the interest of Section members. Unless specifically stated otherwise, its contents reflect the views of authors only, and should not be interpreted as a statement of the position or policies of ATLA or the Section itself.

2004 - 2005 SECTION OFFICERS

Chair

Donald J. Nolan
Nolan Law Group
20 N. Clark, 30th Fl.
Chicago, IL 60602
P: 312/630-4000
F: 312/630-4011
djn@nolan-law.com

Chair Elect

Brian J. Alexander
Kreindler & Kreindler
100 Park Ave.
New York, NY 10017-5516
P: 212/687-8181
F: 212/972-9432
balexander@kreindler.com

Vice Chair

Gary C. Robb
Robb & Robb, L.L.C.
1 Kansas City Place, Ste. 3900
1200 Main St.
Kansas City, MO 64105-2117
P: 816/474-8080
F: 816-474-8081
gcr@robbrobb.com

Secretary/Treasurer

Victor M. Diaz, Jr.
Podhurst Orseck et al
25 West Flagler, Ste. 800
Miami, FL 33130-1720
P: 305/358-2800
F: 305/358-2382
vdiaz@podhurst.com

Newsletter Editor

Justin Timothy Green
Kreindler & Kreindler
100 Park Ave.
New York, NY 10017-5590
P: 212/687-8181
F: 212/972-9432
jgreen@kreindler.com

Immediate Past Chair

Douglas A. Latto
Baumeister & Samuels, P.C.
One Exchange Plaza
New York, NY 10006
P: 212/363-1200
F: 212/363-1346
dlatto@baumeisterlaw.com

The 9/11 Commission Report: Why Isn't the Aviation Industry at Fault?

By: *Jeanne M. O'Grady*¹, New York, NY

When Congress created the September 11th Victim Compensation Fund in the Air Transportation Safety and System Stabilization Act, it guaranteed the victims of the September 11th attacks and their families the compensation (albeit sometimes discounted) they might obtain in civil litigation for their injuries and the deaths of their loved ones.² The Fund, however, deprived the families of the answers to their many questions of "How could this happen?" "What went wrong?" The Fund eliminated the access to information gathered through discovery in a civil lawsuit and the accountability of civil defendants pronounced liable by jury verdict or perceived liable by settlement.

Many families who entered the Fund insisted that their questions be answered and those who failed be held accountable—if only to help prevent future attacks. And in response to an intense and public lobbying effort primarily by widows, the President signed legislation that created the National Commission on Terrorist Acts upon the United States.³ This bipartisan panel undertook to determine how 19 Arab men were able to hijack four aircrafts, almost simultaneously and murder nearly 3,000 innocent Americans. And, more importantly, the Commission was to make recommendations to help ensure that Sept. 11 will never be repeated.

Interestingly, very few Commission recommendations are directed at the aviation industry. Is this an indication that the aviation industry is not at fault? Is it an unwillingness by the Commission to hold the industry accountable? Or was the Commission's focus on the intelligence and political failures?

The Commission attributed the cause of the 9/11 attacks to a lack of imagination, policy, capabilities and management on the part of the U.S. government that kept us from foreseeing and preparing for the terror strikes. The Commission's recommendations are divided into three categories: the need to attack terrorists and their organizations; the need to prevent the continued growth of Islamist terrorism; and, most immediately, to protect against and prepare for future terrorist attacks.⁴ Only the last category implicates the aviation industry. And only three of the more than forty recommendations directly involve transportation security, even though the aviation industry had the very real and immediate ability to prevent the deadly events of September 11th but failed to do so. Regardless of what grander intelligence failures contributed to the attacks, the Federal Aviation Administration, airlines and security companies responsible for

aviation security failed, though the Commission avoids that conclusion.

What Went Wrong?

On the morning of September 11, 2001, 19 men defeated every layer of security implemented to protect our nation's commercial aviation system. They waltzed onto four planes and hijacked them with alarming ease. The Commission notes that the hijackers must have been confident in their ability to defeat security, and rightfully so. At check-in, at four different airports, 10 of the 19 hijackers were Computer Assisted Passenger Prescreening System (CAPPS) "selectees."⁵ CAPPS, an FAA-approved program which was utilized by the airlines to profile certain passengers who might pose a risk to aircraft, selected these suspect passengers for additional security measures.⁶ The fact that the program identified more than half of the hijackers says that at least to some degree, the program worked. What failed, though, was the consequence of being a "selectee." Unfortunately, the only impact was on the screening of the selectees' checked luggage.⁷ Their checked baggage was not loaded onto the aircraft until the hijacker selectees had boarded.⁸ For those who checked no luggage, being a CAPPS selectee held absolutely no consequences. An airline representative selected two more of the hijackers because one did not have photo identification, could not respond to the routine check-in questioning, and because the agent found them "suspicious."⁹ Again, the only consequence was that their baggage was held until they boarded.¹⁰ At Dulles airport, all five hijackers were flagged for heightened security scrutiny and the only impact was the handling of their checked luggage.¹¹

Then each of the 19 hijackers, 12 of whom have already aroused "suspicion," passed undetected through a security checkpoint even though they were all probably armed. The Report suggests that the men were able to board the aircraft with box cutters, knives and mace.¹² There have also been unconfirmed reports of guns aboard two of the flights.¹³ The Commission reviewed closed circuit television footage from Dulles Airport (from which American Airlines Flight 77 departed) in order to determine the level of scrutiny to which the hijackers were subjected at the checkpoints – as the screeners recalled nothing unusual.¹⁴ Three of the five hijackers, all five of whom were selected for heightened scrutiny, set off the metal detectors at the Dulles checkpoint.¹⁵ Two were hand wanded,

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and one had his carry-on bag swiped through an explosive trace detector. All four hijackers carrying carry-on luggage had their bags x-rayed.¹⁶ Presumably, there was no more thorough inspection or investigation at the checkpoints at Newark or Logan airports. A screening expert reviewed the Dulles video and called the screening "marginal at best." At the very least, he believed the screener should have resolved what set off the metal detector alarms.¹⁷ There is no indication that any additional or specialized screening was performed as a result of the hijackers' CAPPs selectee status.

While before September 11th the FAA set and enforced security rules, it left to the "common sense" of the air carriers and screening companies the development of specific guidelines (checkpoint operations guides) for the implementation of the FAA's basic directives.¹⁸ This "common sense" approach permitted knives with up to four-inch blades on passengers, so long as they were not "menacing," because they would be difficult to detect and increased alarms might create congestion at checkpoints.¹⁹ It designated computer profiled "selectees" for increased scrutiny, but concerns regarding potential discrimination limited that scrutiny to the selectee's checked baggage.²⁰ "Common sense" allowed the air carriers to abandon the FAA requirement that screeners perform continuous and random hand searches of carry-on luggage.²¹ It dictated that security concerns not interrupt the aviation industry's primary mission – the swift movement of its passengers.²² It permitted the failures of machinery and personnel in even the FAA's own tests. It disregarded warnings regarding real threats to civil aviation.²³ "Common sense" allowed the terrorists access to the planes and the means to hijack them.

What Will Be Done About It?

In an attempt to remedy the transportation system failures that contributed to the 3,000 deaths on September 11th, yet another layer of bureaucracy was created. The Aviation and Transportation Security Act, passed just two months after the attacks, created a new agency. The Transportation Security Administration and charged it with, among other functions, the development of measures to address threats to transportation, including the implementation and oversight of airport screening systems and personnel.²⁴ The TSA essentially assumed all civil aviation security functions previously assigned to the Federal Aviation Administration, as well as all checkpoint screening functions previously attended to by air carriers.²⁵ Dangerously, the statute also allows the new agency to wrap itself in the protective sheath of "Sensitive Security Information," a term it can use to describe virtually any information it deems affecting transportation security, thereby shielding it from public disclosure.²⁶ So the agency that has taken over security functions has been

instilled with the ability to shield itself from public scrutiny. The Commission's Report is critical of the TSA – already – noting that the fledgling agency has already failed to meet congressional deadlines for developing a strategic plan for securing the transportation system generally, or the individual modes – air, sea or ground.²⁷ The Commission criticizes the TSA for using its budget to fight the "last war" in commercial aviation, and failing to consider the next, in cargo, general aviation, or maritime or surface transportation.²⁸ The Commission's first recommendation, therefore, is that the government make hard choices and evaluate the assets to be protected, and develop a risk based, practical and cost-effective plan, budget and funding to implement it.²⁹ The Commission recommends that the government delegate roles among the various governmental entities and private companies involved to create at least the perception that potential targets are protected.³⁰ It suggests that a significant "chance of failure" may be an adequate deterrent against terrorist attack.³¹ The long term investments are suggested in the areas of technology – such as improvements in scanning and screening, with the most immediate areas of attention being dedicated to identifying threats in containers, operators and facilities, intelligence analysis, and the transmission of threat information.³²

The Commission notes that by 8:00 a.m. that horrific day, all 19 hijackers had defeated every layer of the nation's aviation security system. And the solution? Another multi-layered security system. Again the Commission recommends that the TSA develop a plan for security, one that takes into account the full scope of possible attacks. This plan must implement a security system with multiple layers, each layer functional in its own right, coordinated and overlapping with other layers.³³ Specifically, the Commission recommends an improved use of the "no fly" and "automatic selectee" lists by the TSA while we await the development of CAPPs II waits (expected in 2005).³⁴ The Commission recommends that the TSA take over this screening function from the airlines (eliminating the concerns of sharing intelligence information with these private firms), and that the airlines be compelled to supply the information needed to adequately implement the new CAPPs system.

The report discusses the importance of the screening checkpoint itself, and of the screeners, noting two reforms needed "soon": the screening of passengers themselves for explosives and the improvement in performance by the screeners. The final recommendation made by the 9/11 Commission to the aviation industry is that the TSA and Congress give priority attention to improving the ability of screening checkpoints to detect explosives on passengers; and to understanding the problems in screener performance and setting attainable goals for individual screeners and checkpoints.³⁵ More specifically, the report suggests that greater resources be directed toward reducing the threat posed by explosives in the cargo hold, both

Recent Developments Relating to the General Aviation Revitalization Act

By: [Justin T. Green](#)¹, New York, NY

The General Aviation Revitalization Act of 1994 (“GARA”),² is a tort reform measure that imposes an eighteen-year statute of repose for General Aviation aircraft.³ The statute of repose does not bar actions where the defendant knowingly misrepresents or conceals required information that is material and relevant and causally related to the harm plaintiffs suffered. It also does not apply to new components or instructions promulgated after original manufacture within the eighteen-year period.

Over the past year, plaintiffs have succeeded in establishing these exceptions to GARA and, thereby, survived summary judgment motions.

In *Robinson v. Hartzell Propeller Inc.*,⁴ plaintiffs alleged that defendant Hartzell negligently designed a propeller. Significantly, plaintiffs also contended that Hartzell knew of the propeller’s defects and misrepre-

sented the design problems to the FAA, which rendered GARA’s statute of repose inapplicable. Furthermore, plaintiffs argued that GARA’s eighteen-year period began only in 1984 when Hartzell issued an overhaul manual or 1989 when the propeller was overhauled.

In a comprehensive decision, the Robinson court concluded that plaintiffs had submitted sufficient evidence to create genuine issues of material fact with respect to whether Hartzell made material misrepresentations that were causally related to the harm suffered. The court, however, rejected the plaintiffs’ arguments that the 1984 overhaul manual was causally related to the accident and that the overhaul of the propeller restarted the GARA clock. Furthermore, the court ruled that plaintiffs’ experts could not testify on the subjective intent of the Hartzell employees in making representations at issue. In *Butler v.*

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by the installation of in-line baggage screening equipment and hardened containers in passenger aircraft carrying cargo. It is suggested that the TSA intensify efforts to track and screen dangerous cargo in both the aviation and maritime sectors.

Obviously, the terror attacks were the result of grand failures on many levels of government and private industry. The Commission is very specific in its criticisms of the government and its suggestions for change, from the development of biometric systems of travel identification, to the installation of a national intelligence director who will coordinate the intelligence gathering made by various agencies.³⁶ The Commission is thorough and forward thinking in its recommendations on these fronts – emphasizing even the importance of satellite television to Arab audiences and the need to promote educational opportunities for young Muslim children.³⁷ While these ideas and suggestions are innovative and vast improvements, they are so grand as to be ideals more than executable strategies for warding off terrorist strikes.

The Commission directs its aviation security suggestions to the TSA and government without comment on the wisdom of the creation of the agency. In the narrative describing the events of September 11th and the events that lead to the attacks, the Commission criticizes the FAA. In its recommendations, it criticizes its successor, the TSA, for failing to meet deadlines for the develop-

ment of a plan of action for protecting our transportation system. The Commission criticizes the “large, unwieldy U.S. government” for underestimating the threat of terrorist attack, and yet accepts without comment the government’s response to the attacks – the creation of yet another layer of government assigned to protect the travel system.³⁸ There is no comment in the Report on whether the establishment of the TSA is a viable solution, or if the TSA is best suited to secure our airways. There is little comment directed to private industry, despite the fact that in November 2004, airports may begin the process of “opting out” of TSA provided security, and despite the fact that the airlines are currently and will remain on the front lines against terrorist attacks.³⁹

The Commission report virtually ignores the fact that the theory behind the CAPPs system worked. It flagged half the hijackers. And a sharp airline employee flagged two more. The Commission does not examine the need for a successful and more comprehensive CAPPs II program, or make real suggestions for addressing the privacy concerns a more thorough profile creates (other than to remove the airlines from the program’s administration). It makes no demand that the future CAPPs program be integrated with other stages of passenger screening. The Report does not address the shortcomings of the COGs, or suggest any real common sense strategies for airport

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e-Discovery Alert

Will Corporate Defendants Gain Special Advantages? The federal courts need your input on new court rule proposals!

by James E. Rooks, Jr., Center for Constitutional Litigation, P.C.

In August, 2004, the Advisory Committee on Civil Rules for the federal courts published proposed new rules for the federal courts on electronic discovery ("e-discovery"). If adopted, these changes to the Federal Rules of Civil Procedure will govern all discovery of information stored on electronic media (email, databases, computer design models, test data, etc.).

Many trial lawyers have told us that they believe that these changes would invite additional discovery abuse, give corporate litigants additional procedural and substantive advantages, and continue the erosion of the right to discovery—and, ultimately, of the distinct American system of notice pleading itself. In their effect on state practice, and in their diminution of litigants present rights, these changes may also violate the federal courts' statutory rulemaking authority, and even step beyond federal Constitutional limits.

The rulemakers are soliciting comments from the bar on the proposed amendments, and trial lawyers are urged to file comments to inform the rulemakers of the likely impact of such changes on trial practice, based on their real-world litigation experience.

The three most controversial proposals are summarized below.

Do The Rules Need To Be Changed?

Changing the rules on electronic discovery is a high priority for the casualty insurance industry, corporate counsel, and the tort defense bar. They have lobbied the rule-making committees of the federal courts for years to make these changes. The corporate side argues that rule changes are necessary to cure alleged problems related to the volume of computer-based information that must be preserved and the alleged difficulty of identifying and recovering data from older systems. However, many trial lawyers believe that the present federal rules work well for all kinds of discovery, and need little, if any, change.

Danger to state courts as well as federal courts. Although the proposed amendments will apply only to the federal courts, ATLA members who practice for the most part in state courts are almost sure to be affected by them in the future. State rules often track the federal rules closely, and the corporate and defense bar is already urging state courts to adopt similar new rules for e-discovery.

The proposed amendments and the background of the movement for special e-discovery rules are analyzed at greater length: James E. Rooks, Jr., "Will E-discovery Get Squeezed?", *Trial* magazine, Nov. 2004 at 18.

The Three Most Extreme Proposals

The three most controversial proposals to change the Federal Rules of Civil Procedure, with observations of trial lawyers who have studied the proposals, are:

(1) A two-tier discovery regime. *Rule 26 would be amended to provide producing parties an initial exemption from their current obligation to turn over e-discovery material if they claim that it is "not reasonably accessible." The proposed language is:*

Rule 26(b)(2). A party need not provide discovery of electronically stored information that the party identifies as not reasonably accessible. On motion by the requesting party, the responding party must show that the information is not reasonable accessible. If that showing is made, the court may order discovery of the information for good cause.

Trial lawyers say: Under the present rules, relevant requested information must be produced even if its custodian claims that it is difficult to access. No exemption like the one this amendment would create is available for paper discovery—and electronic information is usually *more* accessible than are paper records. A number of consumer-side lawyers believe that this change would even more stonewalling than they already encounter. They are also concerned that requiring the requesting party to obtain the information through an extra hearing before an already-overburdened federal judge is oppressive—and that it could be an intermediate step toward establishing similar requirements for all discovery requests, not just e-discovery.

(2) An extra chance to assert claims of privilege. *Rule 26 would be further amended to create a previously unheard-of right to recover already-produced material that a party later claims is "privileged."*

Rule 26(b)(5)(B). When a party produces information without intending to waive a claim of privilege it may, within a reasonable time, notify any party that received the information of its claim of privilege. After being notified, a party must promptly return or destroy the specified information and any copies. The producing party must

comply with Rule 26(b)(5)(A) with regard to the information and preserve it pending a ruling by the court.

Trial lawyers say: If adopted, this amendment would apply to all discovery, not just e-discovery. It would create a new substantive right with regard to privileged material. If the claim of privilege is contested, it would set a high standard for a requesting party to meet: proving that the information was not privileged, or that the party “intended” to waive its privilege. It would preempt some existing state law that declares privilege non-existent once disclosure is made, even inadvertently, or that requires lawyers to use all information that will advance their clients’ interests. This change could require return or destruction of liability-proving material forwarded to cooperative programs like the ATLA Exchange and the Attorneys Information Exchange Council. And, like other proposed amendments, it would require extra hearings, with the inevitable expenditure of lawyers’ time and judicial resources, to overcome the privilege claim.

(3) A free pass through the spoliation gate. *Rule 37 would be amended to exempt parties from sanctions in some cases when they destroy electronic files through “routine” use of their document retention systems—even those systems set up with short time periods for destruction:*

Rule 37. (f) Unless a party violated an order in the action requiring it to preserve electronically stored information, a court may not impose sanctions under these rules on the party for failing to provide such information if: (1) the party took reasonable steps to preserve the information after it knew or should have known that the information was discoverable in the action; and (2) the failure resulted from loss of the information because of the routine operation of the party’s electronic information system.

Trial lawyers say: Under the present rules, entities that may become parties to litigation are deterred—by the potential for charges of spoliation—from destruction of discoverable electronically stored information. Many trial lawyers believe that giving them a “safe harbor” when they destroy information through the “routine” operation of their document retention system will invite them to set up systems in which data are “routinely” purged at very short intervals. In one recent notorious example, this strategy appears to have been used by a tobacco company that set up a system that purged its email messages frequently, making them unavailable for production in the present fraud litigation with the federal government! {Fortunately, the judge on the case fined the companies \$2.75 million for their misconduct last summer.)

What Can Consumer-Side Lawyers Do?

The rule-makers welcome all comments on their proposals, whether favorable, adverse, or *neutral*—especially from practitioners who have substantial experience to relate. They consider all comments carefully, and they expect a robust debate on the subject of e-discovery.

As always, the way to preserve an effective discovery regime, with a level playing field, and to retain our system of notice pleading, is to tell the rulemakers *the truth* about how discovery works in practice on the consumer side, in both the state and federal courts. ATLA members can do so by filing comments or testifying at one of the three hearings scheduled by the rulemakers. Here’s what to do:

(1) Look at the proposed amendments. A summary of the proposed rule changes is available at www.uscourts.gov/rules/comment2005/CompleteBrochure.pdf. The complete proposed civil rules amendments, with an explanatory memorandum and extensive notes by the Advisory Committee on Civil Rules, is published at www.uscourts.gov/rules/comment2005/CVAug04.pdf.

(2) File a written comment. Write to the rulemakers about your experience with e-discovery and privilege practice. Comments by surface mail should be addressed to Peter G. McCabe, Administrative Office of the U.S. Courts, One Columbus Circle, N.E., Washington, DC 20544. Submit comments on line at www.uscourts.gov/rules/submit.html.

Comments are due by February 15, 2005.

(3) Testify at a hearing. The rulemakers have also scheduled three public hearings on the proposed amendments:

- January 12, 2005, in San Francisco
- January 28, 2005 in Dallas, and
- February 11, 2005 in Washington, D.C.

The number of witness permitted to testify at each hearing is limited. Members of the bar who wish to testify at a hearing should contact Mr. McCabe’s office immediately.

Because of the diversity of ATLA’s sections and litigation groups, and the variety of problems their members encounter in discovery, representatives of all sections and litigation groups are urged to testify at hearings. Historically, the defense bar has provided numerous live witnesses at Advisory Committee hearings, and it is clear that they hope to do the same this time. As of mid-October, 2004, the Committee had already received requests to testify from members of the tort defense and insurance bar and lawyers connected to Microsoft Corporation, Exxon Mobil Corporation, International Association of Defense Counsel, Micron Technology, Inc., CIGNA Corporation, and BASF Corp.

For more information on commenting or testifying, contact Jim Rooks, who monitors federal rulemaking for ATLA.

James E. Rooks, Jr., Senior Policy Research Counsel, Center for Constitutional Litigation, P.C., 1050 31st Street, N.W., Washington DC 20007, Tel.:202-944-2841, jim.rooks@cclfirm.com.

The Center for Constitutional Litigation, P.C., ATLA’s law firm, works to change laws that impede access to justice.

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personnel (whether TSA or privately employees). In reality, when the other layers of security failed, from the CIA on down, and when (not if) they fail again, there will be one layer of security that can keep the next 19 hijackers out of our aviation system – airport security technology and personnel. The importance of that last line of defense cannot be underestimated.

Conclusion

In the microcosm of aviation and travel security, where failures can be pinpointed, and precise improvements made, the Commission does not point the finger as vigorously, or provide a detailed plan for improvement. Perhaps the Commission was conscious that it not provide a roadmap for the civil litigation currently pending against the airlines, airport operators and security companies.⁴⁰ Perhaps the statute that created the Commission was merely The Air Transportation Safety and System Stabilization Act, Part II, whose purpose yet again was to protect the airline industry by shifting the blame elsewhere. But if the task of this Commission was to determine exactly why the terrorists succeeded that day, and to help ensure that it never happen again, it has not accomplished that task. Why didn't the 9/11 Commission take a serious look at the aviation system failures that occurred within the course of about two hours on the morning of September 11th? Why didn't the Commission make specific and realistic suggestions for the individuals on the front line of this continuing war? Whatever the reason, it is clear that the Commission looked at the system's failures with less than the unbiased eyes of a jury and the 9/11 families are still lacking the accountability and realistic solutions they were promised.

1. *The author is an attorney practicing in the New York office of Speiser & Krause.*

2. *Pub. L. No. 107-42 (September 22, 2001).*

3. *Pub. L. No. 107-306 (November 27, 2002)*

4. *The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks Upon the United States (July 26, 2004), p.363.*

5. *9/11 Report p. 451, Note 2 to Ch. 1*

6. *Id. p. 84.*

7. *Id.*

8. *Id.*

9. *Id. at p. 3.*

10. *Id.*

11. *Id.*

12. *Id. at pp. 4-14*

13. *Id.*

14. *Id. at p. 3.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Seventh Public Hearing of the National Commission on Terrorist Attacks Upon the United States, Day Two (January 27, 2004), Transcript, pp. 10-12*

19. *9/11 Report, p. 84.*

20. *Id.*

21. *Id.*

22. *Id. at p. 85.*

23. *Id. at 83, Ch. 3, Notes 50-53.*

24. *Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat. 597 (November 19, 2001) Amendment to 49 U.S.C.A. 40101.*

25. *Id. at 49 U.S.C. 44901(g). Air carriers or airport operators were previously responsible for contracting with private screening companies.*

26. *Id.*

27. *9/11 report, p. 391.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id. at p. 392.*

34. *Id. at p. 393.*

35. *Id.*

36. *Id. at 361-428.*

37. *Id. at pp. 377-78.*

38. *9/11 Report p. 348.*

39. *Pub. L. No. 107-71 § 108.*

40. *In Re September 11 Attacks, 21 MC 97 (AKH), consolidated actions currently pending in the United States District Court for the Southern District of New York.*

Jeanne M. O'Grady, Speiser Krause Nolan & Granito, 140 E. 45th St., 34th Fl., New York, NY 10017, 212/661-0011, jog@ny.speiserkrause.com.

Call for Articles

The Aviation Law Section is always looking for ideas and submissions for this newsletter. You are invited to submit case notes, analysis of particular areas of developing law, checklists and timetables for trial preparation, or helpful anecdotes from your own practice. We invite all members to write educational newsletter articles for publication. Please contact [Justin Timothy Green, Kreindler & Kreindler,](mailto:JustinTimothyGreen@kreindler.com)

100 Park Ave., New York, NY 10017-5590, P: 212/687-8181, F: 212/972-9432 jgreen@kreindler.com, if you would like to contribute an article for national publication.

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Some Reflections On September 11th Litigation

By: Vincent I. Parrett ¹, [Kreindler & Kreindler LLP](#), New York, NY

"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."

-Marbury v. Madison, 5 U.S. 137, 163 (1803)

Three years have passed since the September 11, 2001 attack on America changed much about the way we live, what we worry about as well as how we protect our national and personal security. Distanced somewhat by time from that terrible day, it will serve us well to reflect upon important issues relating to our role as lawyers in the aftermath of September 11. How is the civil justice system working to help those who are victims deal with the impact of their losses? How do we grade the legislative response to September 11? What will be the public's reaction to September 11-related litigation, and to the legal issues,

claims, and defenses which the litigation presents? What will be the political reaction, the short and long-term effects on domestic litigation, the litigation impact on foreign relations? What will be the impact of September 11 on our civil justice system? It is also critical that we stop and analyze these issues before we are carried away with change by unwarranted rumblings for 'tort reform' that brings with it adverse social consequences masked as 'progress.'

Congress Responds To 9/11: The Air Transportation Safety and System Stabilization Act

Before the fires at World Trade Center had been extinguished, and before there was anything close to a definitive

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Recent Developments continued from Page 5

Bell Helicopter Textron, Inc.,⁵ the California Court of Appeals reversed the lower court's entry of summary judgment in favor of defendant based on GARA. The court noted that Bell had an affirmative duty under FAA regulations to report failures of component parts and Bell's breach of that duty precluded GARA's application. The part at issue was the subject helicopter's tail rotor yoke and the court noted evidence that Bell, within GARA's period of repose, withheld information from the FAA about military aircraft accidents it knew were caused by failures of the identical yoke. Significantly, the court held that FAR part 21.3⁶ imposed a duty to report to the FAA the military failures in the tail rotor yoke.

In *Hiser v. Bell Helicopter Textron, Inc.*,⁷ the California Court of Appeals held that GARA's statute of repose did not bar an action caused by a defective replacement part installed on the subject helicopter within the statute of repose period. While the court affirmed the trial court's plaintiff's verdict, it found that replacement of components of the fuel transfer system did not constitute replacement of the entire system. The court, however, found defendant's GARA defense was a "red herring" and that substantive evidence supported plaintiff's claim that a replacement part was causally related to the accident.

In *Carson v. Heli-Tech, Inc.*,⁸ the court denied McDonnell Douglas Helicopter Company's ("MDHC") motions for summary judgment based on GARA and the government contractor defense.⁹ The court found that the plaintiffs met their burden of establishing a jury issue on whether the 1996 addition of an aluminum reinforcement

sleeve around the lateral control rod and rod end bearing of the OH-6A helicopter contributed to the subject crash. The court rejected MDHC's government contractor defense because it had failed to offer proof of government review and approval of the materials at issue.

Hopefully we will be able to build on the successes of the plaintiffs in the cases discussed. GARA is not an insurmountable defense and it is in the public interest to hold manufacturers responsible for dangerous products. It is particularly in the public interest to bring to light any misrepresentations that a manufacturer made to the FAA. Unfortunately, plaintiffs' lawyers are often the only ones willing or able to shed light on this corporate malfeasance.

1. The author is a partner at [Kreindler & Kreindler LLP](#) and is the newly appointed editor of the *ATLA Aviation Newsletter*.

2. Pub. L. No. 103-298, 108 Stat. 1552 (reprinted in notes for 49 U.S.C. §40101).

3. GARA § 2(a).

4. 326 F.Supp.2d 631 (E.D. Pa. 2004).

5. 109 Cal. App. 4th 1073, 135 Cal. Rptr. 2d 672 (App. Ct. 2003).

6. Part 21.3 provides:

[T]he holder of a Type Certificate . . . shall report any failure malfunction, or defect in any product, part, process, or article manufactured by it that it determines has resulted in any of the listed in paragraph 4 (c) of this section."

7. 111 Cal. App. 4th 640, 4 Cal. Rptr. 3d 249 (Ct. App., 4th Dist., 2003).

8. 2003 WL 22469919 (M.D. Fla. Sept. 25, 2003).

9. See *Boyle v. United Technologies Corp.*, 487 U.S. 500 (1988).

Justin T. Green, [Kreindler & Kreindler](#), 100 Park Ave., New York, NY 10017-5590, 212/687-8181, Fax: 212/972-9432, [jgreen @ kreindler.com](#)

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body count, the airline industry lobbyists were pressing the Administration to protect the airlines from the economic consequences of the attacks. They were gravely concerned about their economic stability, reduced passenger loads, lost revenue, litigation claims against them by 9/11 victims, litigation costs, and their insurance premiums.

Within days — less than two weeks, in fact — Congress cobbled together the Air Transportation Safety and System Stabilization Act (“ATSSSA”) that was signed into law on September 22, 2001.² Obviously, if the airlines were to receive any economic protection, the victims were likewise entitled to some federal protection and some compensation. Anything less would have been morally and politically indefensible.

A careful look at Title IV of the ATSSSA that created the September 11th Victim Compensation Fund (“VCF”) provides insight into Congress’s perspective. First, it created a discretionary administrative compensation system not subject to judicial review.³ Second, it preserved the right to pursue civil litigation remedies, but at the cost of forfeiting the right to compensation through the VCF.⁴ Third, any VCF award would be reduced by certain ‘collateral sources,’ in particular, victims’ own life insurance and other death benefits.⁵ Fourth, it gave exclusive jurisdiction to the Southern District of New York federal court “over all actions brought for any claim resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.”⁶ Finally, it limited the liability of domestic defendants sued for September 11th-related misfeasance to the limits of their liability insurance coverage⁷ (i.e., approximately \$1.5 billion per aircraft). These innovative and unprecedented legislative enactments made practical and political sense in the unique context of September 11th.

Query: will this ATSSSA legislative initiative that was unprecedented before September 11th now become some kind of blueprint for radical changes to the civil justice and tort system that are paraded through the corridors of some state and federal legislatures in the guise of “tort reform”? Hopefully not. One would expect that as September 11th was extraordinary, the ATSSSA relief legislation should not be a benchmark for new laws related to litigation. To be sure, industry lobbying efforts aimed at protecting corporate coffers have long claimed that litigation costs are the Achilles heel of profitability though there is no economic data to support that claim. The corporate lobbyists argue that keeping balance sheets healthy, including those of insurance companies, requires that the rights of victims of tortious conduct be limited. That perverse logic leads to unwarranted limitations that are both direct and indirect: limit recoveries and limit legal fees so that the litigation option is less attractive for both the victims and their lawyers. That is short-sighted and not fair.

Corporations that oppose any legislation that interferes with their business and profitability should not enhance their bottom lines at the expense of victims.

Ensuring that the ATSSSA legislation—which was justified by the unique circumstances of the September 11th crisis—will not damage the basic fabric of the civil justice system, and preserve victims’ rights to obtain full compensation from culpable parties, will require the careful attention of lawyers and legislators. ATLA must continue to lead the fight to secure plaintiffs’ rights to claim the protection of the laws by civil action. Rest assured, Corporate America’s ‘tort reform’ lobbyists are legion and will do all in their power to emasculate civil tort remedies.

In Re September 11 Litigation

I. Plaintiffs Sue To Seek Redress Against Aviation Defendants, World Trade Center Defendants, & Boeing

To secure the legal rights of September 11th victims who have chosen to litigate, plaintiffs’ counsel in the consolidated civil litigation before Judge Alvin K. Hellerstein of the U.S. District Court for the Southern District of New York, filed suit on behalf of scores of September 11th victims against those domestic defendants who plaintiffs believe bear a measure of responsibility for their injuries, including: (1) the airlines, the airport security companies, the airport operators (collectively, the “Aviation Defendants”); (2) the operators and owners of the World Trade Center (“WTC Defendants”), and (3) Boeing Company, the manufacturer of the seized airplanes.

Specifically, in their consolidated master complaints, plaintiffs alleged that the Aviation Defendants failed to fulfill their security responsibilities, and, in consequence, the terrorists were able to hijack the airplanes and crash them into the World Trade Center, the Pentagon, and the field in Shanksville, Pennsylvania, killing passengers, crew, and thousands in the World Trade Center and the Pentagon and causing extensive property damage.⁸ The complaints allege that the owners and operators of the World Trade Center negligently designed, constructed, maintained, and operated the buildings, by failing to incorporate safety features and devices such as structural fireproofing, and by failing to develop and implement evacuation plans that would allow occupants safe and effective egress. And the complaints also allege that Boeing negligently designed their cockpits and the cockpit doors, which allowed easy access by terrorists.

II. Defendants Move To Dismiss On The Ground That No ‘Legal Duty’ Existed To September 11th Victims

As expected, those domestic defendants immediately tried to end the civil litigation by filing Fed.R.Civ.P. Rule 12(b)(6) motions to dismiss, asserting that plaintiffs failed to state a claim upon which relief could be granted.⁹

Defendants urged Judge Hellerstein to dismiss the complaints because defendants supposedly bore no “legal duty” to plaintiffs to prevent their injuries, and because defendants supposedly could not have foreseen that terrorists who hijacked planes could crash them, killing passengers, crew, thousands on the ground, and themselves. For instance, the Aviation Defendants argued:

[T]he basis of this motion is that, regardless of any allegations of carelessness or failures or either pre-boarding or in-flight security, or other allegedly tortious conduct, the Ground Damage Plaintiffs cannot, as a matter of law, recover from the Aviation Defendants because none of these defendants owed a legal duty to protect these particular individuals or entities in the circumstances of September 11.¹⁰

Moreover, defendants suggested that the magnitude of the personal and national trauma that we all experienced somehow excused their legal duty, responsibility, ability and capacity to prevent or minimize the risk of death or injury of victims on September 11. As floridly put by the WTC defendants:

On that day, the blanket of domestic security from attack by foreign interests on our shores, under which we had rested since the War of 1812, was brutally ripped from our body politic and the cold, damp wind of a newer, more dangerous world swept over us all. In truth, “extraordinary” fails to convey the full horror. Under these circumstances, it is an outrage that plaintiffs would even consider attempting to shift the blame from the terrorists to the Ground Defendants. . .¹¹

How ironic that the enormity of the tragedy should prompt the call to forgo litigation against potentially negligent defendants.

III. The Response of Plaintiffs’ Counsel To Preserve The Right Of September 11th Victims To Assert & Prove Their Claims Against Defendants

Although civil litigation against U.S. corporations in response to a terrorist attack against our country may not be popular, it is necessary and justified. To be sure, civil litigation is more complicated when a terrorist actor is the immediate cause of the injuries even though here plaintiffs claim the terrorists were not the sole “cause” of plaintiffs’ injuries.

Plaintiffs’ lawyers commonly deal with such issues, e.g., in the case arising out of the terrorist bombing of Pan American Flight 103 over Lockerbie, Scotland, a jury found that Pan Am was liable for ‘willful misconduct’ in failing to provide adequate security, despite the fact that terrorists, not Pan Am, destroyed the aircraft. In re Air Disaster at Lockerbie, Scotland, on Dec. 21, 1988, 37 F.3d 804 (2d Cir. 1994). Without the efforts of experienced

counsel the Pan Am 103 families would not have been able to prevail against Pan Am and recover damages. Likewise, they would not have been able to resolve claims against Libya.¹²

In the In Re September 11 Litigation, plaintiffs’ counsel responded to defendants’ motions to dismiss by making clear at the outset that:

[T]he magnitude of the personal and national trauma we experienced cannot excuse any of the Defendants who had the legal duty, responsibility, ability and capacity to prevent or minimize the risk of death or injury of victims on September 11, 2001 from being held accountable. Those who sustained property losses as a result of the terrorist-related air crashes are also entitled to compensation if the Defendants’ negligence was a contributing cause of their damage. Legal responsibility does not evaporate simply because the losses are great or because we all suffer.¹³

Plaintiffs’ counsel next pointed out that under well-established principles of tort law,

“it has long been recognized to be both ‘common sense’ and ‘good policy’ to impose liability on those persons best able to prevent harm from occurring.”¹⁴ As the New York Court of Appeals recently explained, the key to its analysis of duty hinges on whether “defendant [is] in the best position to protect against the risk of harm.”¹⁵ And plaintiffs’ counsel demonstrated that each of the defendants were in the best position to protect against risks of harm.

A. Arguments Of Plaintiffs’ Counsel Against Aviation Defendants

The Aviation Defendants’ insistence that they had no duty to ground victims was belied by the fact that the Aviation Defendants were in the best position to protect passenger aircraft against potential terrorists and weapons smuggled aboard and thereby to prevent the terrorists from hijacking and crashing four airplanes. Simply put, plaintiffs’ counsel argued that “the duty and ability of defendant airlines and airport security companies to control the risk of harm by their ability to control and prevent unauthorized use of a aircraft is the basis upon which their liability is founded.”¹⁶ Plaintiffs argued that the Aviation Defendants employed their security measures specifically to guard against hijackings, and knew or should have known that the hijacking of a jumbo jet would create substantial risk of damage to persons and property, not only to the passengers and crew, but also to people and property on the ground: “In short, negligent security equates with negligent piloting for liability purposes. No one can seriously maintain that negligent oper-

Reflections on September 11th continued from Page 11

ation of an aircraft by a hijacker does not pose a foreseeable risk of enormous harm to passengers and people on the ground."¹⁷

B. Arguments Of Plaintiffs' Counsel Against WTC Defendants

The WTC Defendants insisted that they owned no duty to "anticipate and guard against crimes unprecedented in human history."¹⁸ Plaintiffs' counsel responded that the issue is not whether the WTC Defendants had a duty to guard against crime, but rather whether the WTC Defendants had a duty to implement effective fire-safety and evacuation procedures to provide for the egress and escape of more occupants:

[T]he WTC Towers were more vulnerable than ordinary buildings to the potential catastrophic effects of a high-rise fire. In response to this heightened foreseeable risk defendants had a corresponding duty to take reasonable precautions in designing the buildings and establishing adequate fire protection systems. . . . Accordingly, plaintiffs allege that the Ground Defendants were negligent in failing to construct a fire safe building and for not adopting reasonable fire-safety precautions, including, most obviously, adequate fire-proofing and an adequate emergency management and evacuation plan.¹⁹

Indeed, by negligently failing to provide various fire-related safeguards, defendants caused the entrapment of many more people and the loss of many more lives. It is undisputable that the WTC Defendants were in the best position to design, construct, repair and maintain the WTC buildings to withstand the effects and spread of fire, to avoid building collapses caused by fire, and to provide for safe egress of its occupants. Accordingly, if it is proved that they breached that duty they will be legally responsible for the injuries and deaths that could have been prevented had the necessary precautions been in place on September 11, 2001.

C. Arguments Of Plaintiffs' Counsel Against Boeing

In the case against Boeing, plaintiffs' counsel alleged that Boeing manufactured and designed defective cockpit doors, and thus enabled the hijackers to invade the cockpit doors and take over the aircraft. As the sole United States domestic manufacturer of commercial airplanes, plaintiffs' lawyers argued that Boeing has long been in the best position to design aircraft in which cockpits are not easily accessed and commandeered by terrorists. As put by plaintiffs' counsel: "That a cockpit should not be accessible to any passengers who tries to gain forcible entry is common sense. When manufacturers are responsible for the safety of their products they

have an incentive to make sure those products are safe. If a safer, less vulnerable airplane could have prevented the events of September 11, it is fair to require the manufacturer of the plane to bear its share of responsibility for those events."²⁰

IV. Defendants' Motions To Dismiss Were Denied.

On September 9, 2003, United States District Judge Alvin K. Hellerstein, presiding over the consolidated September 11th litigation against non-terrorist defendants, rejected defendants' arguments which sought to preclude plaintiffs' right to prove their claims through traditional civil litigation. Judge Hellerstein held "that each of these defendants owed duties to the plaintiffs who sued them."²¹ He ruled that the Aviation Defendants owed a duty of care to victims on the ground to screen and prevent armed terrorists from boarding the airplanes, and that the subsequent crash of the airplanes was within the class of foreseeable risks resulting from negligently performed screening; that the WTC Defendants owed a duty to the occupants to create and implement adequate fire safety measures, even in the case of a fire caused by hijackers; and that Boeing had a duty to design a secure cockpit to prevent the take-over of a cockpit by hijackers.²²

Agreeing with the analysis of plaintiffs' counsel, Judge Hellerstein reasoned that "courts have imposed a duty when the defendant has control over the third party tortfeasor's actions . . . The key in each [situation] is that the defendant's relationship with either the tortfeasor or the plaintiff places the defendant in the best position to protect against the risk of harm."²³ Holding that "the Aviation Defendants owned a duty of care, not only to their passengers to whom they concede they owed this duty, but also to victims on the ground,"²⁴ the Court reasoned: the Aviation Defendants could best control the boarding of airplanes, and were in the best position to provide reasonable protection against hijackings and the dangers they presented, not only to the crew and passengers, but also to ground victims. Imposing a duty on the Aviation Defendants best allocates the risks to ground victims posed by inadequate screening, given the Aviation Defendants' existing and admitted duty to screen passengers and items carried aboard.²⁵

Regarding the WTC Defendants, Judge Hellerstein accepted plaintiffs' argument that these defendants owed plaintiffs a duty to exercise reasonable care in maintaining the WTC in a safe condition, including implementing fire-safety measures that would have provided WTC occupants safe and effective egress during a large-scale fire:

The parties and society would reasonably expect that the WTC Defendants would have a duty to the occupants of the Twin Towers in designing, constructing, repairing and maintaining the structures, in conforming to appropriate building and fire safety codes, and in creating

appropriate evacuation routes and procedures should an emergency occur.²⁶

Judge Hellerstein added that "large-scale fire was precisely the risk against which the [WTC] defendants had a duty to guard and which should have been reasonably foreseeable."²⁷

Regarding Boeing, the District Judge accepted plaintiffs' argument "that it was reasonably foreseeable that a failure to design a secure cockpit could contribute to a breaking and entering into, and a take-over of, a cockpit by hijackers or other unauthorized individuals, substantially increasing the risk of injury and death to people and damage to property, is sufficient to establish Boeing's duty."²⁸ Judge Hellerstein also noted that "the danger that a plane could crash if unauthorized individuals invaded and took over the cockpit was the very risk that Boeing should reasonably have foreseen."²⁹

Conclusion

Plaintiffs' counsel are now engaged in the hard-fought In Re September 11 Litigation to win redress from those who bear responsibility for the victims' injuries. We embrace this challenge. If defendants had prevailed in their motions to dismiss, the September 11th victims who have chosen to sue would never have the chance to commence discovery in In Re September 11 Litigation. Now discovery has begun, a process which should more clearly identify whom besides the terrorists must share responsibility for the September 11th losses, and why.³⁰ If defendants had prevailed, these September 11th victims would have lost the chance to present their case against the domestic defendants fairly and openly to a jury of their peers.

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Reflections on September 11th continued from Page 13

While it may be too soon to identify the ultimate lessons of September 11th, one thing is certain. The opportunity to battle out differences in courtrooms, here and in other countries, is a precious right. Those who perpetrate and enable terror attacks—like September 11th—are attacking that right, our culture, and our values. When we litigate to prove claims and seek redress, we are in a true sense strengthening the very principles the terrorists had hoped to destroy. We look forward to trial.

1. Vincent I. Parrett is an Associate of [Kreindler & Kreindler LLP](#). A graduate of Yale College and New York University School of Law, Mr. Parrett served as an officer in the United States Navy Judge Advocate General's Corps before joining [Kreindler & Kreindler LLP](#).

2. Pub. L. 107-42, 115 Stat. 230, codified at 49 U.S.C. § 40101 (September 22, 2001) ("ATSSSA")

3. ATSSSA, § 405(b)(3)

4. ATSSSA, § 405(c)(3)(B)(i)

5. ATSSSA, § 402(6).

6. ATSSSA, § 408(b)(3).

7. ATSSSA, § 408(a)(1).

8. The Plaintiffs' Master Liability Complaints may be found at http://www.sept11tortlitigation.com/plaintiffs_executive.html.

9. The Aviation Defendants did not, however, move to dismiss the claims of the passengers aboard the seized aircraft, asserting that "the passenger claims involve somewhat different legal issues that may better be addressed in a motions for summary judgment." Aviation Defendants' Brief at 3, n. 7.

10. Aviation Defendants' Brief at 3. The legal briefs of the Aviation Defendants, the WTC Defendants, and Boeing may be read at http://www.sept11tortlitigation.com/significant_defendants_filings.html.

11. WTC Defendants' Brief at 37.

12. On August 15, 2003, Libya submitted to the U.N. Security Council its letter formally accepting responsibility for the Pan Am 103 bombing. Then, on August 23, 2003, Libya deposited \$2.7 billion into an escrow account to fund payments to the Pan Am 103 victims' families under a settlement agreement

negotiated by plaintiffs' counsel. Under that settlement agreement, Libya agreed to pay compensation of from \$5 million up to \$10 million for each victim. Those settlement payments to the Pan Am 103 victims' families have begun.

13. Plaintiffs' Brief, in Opposition the Aviation Defendants' Motions to Dismiss, at 2.

14. Plaintiffs' Brief, in Opposition the Aviation Defendants' Motions to Dismiss, at 6

15. *Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 233 (2001); see also, *532 Madison Ave v. Finlandia*, 96 N.Y.2d 280, 289 (2001)(duty arises when defendant is "in the best position to protect against the risk").

16. Plaintiffs' Brief, in Opposition the Aviation Defendants' Motions to Dismiss, at 20

17. Plaintiffs' Brief, in Opposition the Aviation Defendants' Motions to Dismiss, at 36

18. *In Re September 11 Litigation*, 280 F. Supp. 2d at 299

19. Plaintiffs' Brief, in Opposition to WTC Defendants' Motions to Dismiss, at 3, 9

20. Plaintiffs Brief, in Opposition the Aviation Defendants' Motions to Dismiss, at 7

21. *In Re September 11 Litigation*, 280 F. Supp. 2d 279, 287 (S.D.N.Y. 2003)

22. *In Re September 11 Litigation*, 280 F. Supp. 2d at 295, 301, 310

23. *In Re September 11 Litigation*, 280 F. Supp. 2d at 290

24. *In Re September 11 Litigation*, 280 F. Supp. 2d at 292

25. *In Re September 11 Litigation*, 280 F. Supp. 2d at 294

26. *In Re September 11 Litigation*, 280 F. Supp. 2d at 300

27. *In Re September 11 Litigation*, 280 F. Supp. 2d at 302

28. *In Re September 11 Litigation*, 280 F. Supp. 2d at 307

29. *In Re September 11 Litigation*, 280 F. Supp. 2d at 309

30. Discovery may be complicated by concerns expressed by the Department of Justice and the Transportation Security Administration ("TSA") that disclosure of Sensitive Security Information ("SSI") be restricted. These restrictions will require screening by TSA before disclosure to plaintiffs' counsel of many documents to determine whether SSI is implicated.

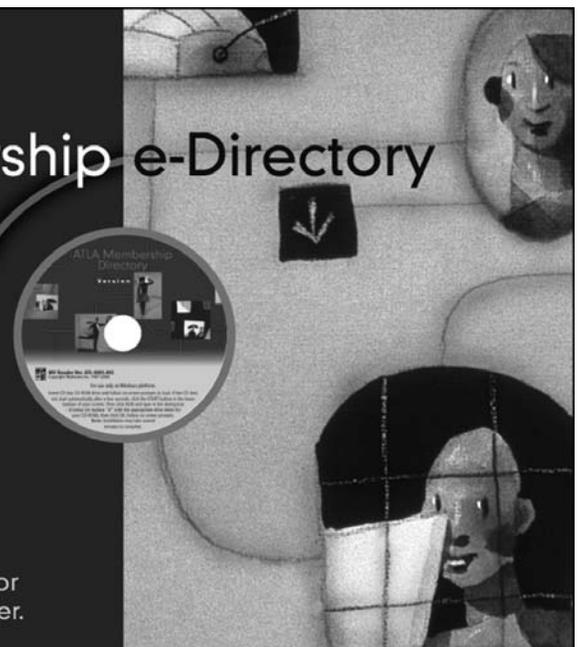
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At the Aviation Law Section business meeting at the ATLA 2004 Annual Convention in Boston, Section members learned about the ATLA Exchange document library system. The library system is an important benefit through which members of our Section can quickly and efficiently share depositions, briefs, and other aviation-related material. This year, one of the Section's priorities is to develop our document library so that we may collectively take advantage of each others' knowledge and experience.

Below I describe how the document library works and some of the benefits of using and contributing documents to it.

How the Document Library Works

Aviation Law Section members submit their materials to ATLA in either paper or electronic format. ATLA posts materials online in the Aviation Law Section document library. Section members may also upload their own electronic documents to the library at any time. Documents become available in the library within 10 business days after receipt at ATLA. Document library materials are accessible online to Aviation Law Section members at no charge.

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