Risk Management in a Changing World
Chair Opening

Nick Hughes
Senior Partner
Holman Fenwick Willan
“May you live in interesting times…”

Peter Garber
Senior Adviser in Global Markets,
Deutsche Bank
The Real World Impact of Events

- **Desmond Barry**, Partner, Condon & Forsyth
- **Saleema Brohi**, Co-Head of Aviation & Partner, Hill Dickinson
- **Peter Matza**, Engagement Director, The Association of Corporate Treasurers
- **Elizabeth Holton**, Consultant, IATA
- **Antoine Trueger**, Director Relationship Management, BNP Paribas
The September 11, 2001 Terrorist Attack and its Litigation Aftermath

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New York  Los Angeles
September 11 Losses

- 2,977 people killed
- 95 litigated personal injury and wrongful death claims
- Destruction of WTC 1, 2, 4 and 5 and WTC 7, and damage to numerous nearby buildings
- Overall payout on first party insurance was in excess of $30 billion
The 9/11 Terrorist Attack Litigation

- Unprecedented facts and damages
- Air Transportation Safety and System Stabilization Act (ATSSSA) and Victim Compensation Fund limits liability
- Initial strategy to defend and not settle any case
- No sharing agreement possible; limited funding agreement to settle 95 death and injury cases
The September 11 Litigation as of September 2004

**AAL FLIGHT 77**
- US Pentagon

**AAL FLIGHT 11**
- 1 World Trade Center

**UAL FLIGHT 175**
- 2 World Trade Center

**UAL FLIGHT 93**
- Shanksville, PA

**World Trade Center Properties**
- Cantor Fitzgerald
  - $1.2 BILLION

**Subrogated Insurers**
- 27 insurers/275 claims
  - $5.5 BILLION

**Other Uninsured Loss Plantiffs**
- $1.1 BILLION

**Wrongful Death/Personal Injury**
- $500 MILLION

**American Airlines**
- Argenbright
- Metropolitan Wash. Airports Authority
- Non-Carriers (8)
- Globe
  - Mass. Port Authority
    - City of Portland, Maine
  - Non-Carriers (12)

**United Air Lines**
- Argenbright
- Port Authority NY/NJ
- Non-Carriers (8)
- Huntleigh
- Mass. Port Authority
- Non-Carriers (11)
- Boeing

**Non-Carriers**
- (8)
- (12)
- (11)
- (8)
The Damages Claims Asserted in the September 11 Litigation

- 95 wrongful death and personal injury claims
- Approximately $24.5 billion in property damage and business interruption claims
- Defense costs over 13 years
The Final Cost of 9/11 to Liability Insurers

- 95 Death and Injury Claims: $550 million
- Subrogated and Uninsured Property Damage Claims: $1.2 billion
- Cantor Fitzgerald Business Interruption Claim: $135 million
- World Trade Center Properties (on appeal): $???$
- Defense Costs to the Insurance Market: $125 million
THANK YOU

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New York  Los Angeles
Networking Break

Elavon
“Would you like to stop bleeding cash...?”

- Carole Gates, Director, Industry Risk Management & Insurance, IATA
- Dr. Martin Smith, Partner, Presage Group
Supporting & Sustaining Airline Financial Health—Are you Bleeding Cash in the Ground Ops Area?

18 September 2014
Carole Gates
Ground operations damages

- $4B / year ground damages
- Paid for by the airlines
- Just think about how much revenue you have to generate in order to cover these losses
- There’s an opportunity to reduce these damages globally and thereby significantly reduce costs within each airline
- By managing the risks better, the industry could save $480 million in year 1; $650 million in year 2, etc.
- We can explain how to do that
Why has this happened in the first place?

- Over the last 10 years airlines have outsourced the majority of ground services to third party providers.
- This has shifted the responsibility for managing the risk to these third party providers.
- Airlines really no longer have complete control over the risk of damage to their aircraft, etc.
- Yet airlines are responsible for virtually 100% of the damages.
- What’s wrong with this picture?
What’s wrong with this picture?

- There is little incentive to manage the risk because airlines are paying for the damages
- On time performance has become more important than quality service
- There’s a lack of coordination within an airline:
  - Risk management & insurance
  - Ground handling procurement
  - Ground handling contracting
- What’s the solution/s?
Solutions?

There are a few specific things that CFOs can do right now:

- Coordinate the activities of your risk/insurance managers with your ground services contracting and procurement personnel; make sure they are not operating in silos.
- Understand what your biggest risks are and what the root causes of your damages are (80% caused by human error)—and tackle this.
- Encourage your service providers to become ISAGO registered (this means they must implement risk management and must report certain data).
- Make sure you know how much insurance your ground service providers carry; encourage them to have reasonable/appropriate levels of coverage.
- Make sure your Service Level Agreements focus more on quality service than on-time performance.
Key ingredients for risk reduction

- **Your Airline/Ground Handler:**
- Identify and quantify your exposure
- Deploy a robust risk management architecture
- The former ensures a robust SMS, quantification and mitigation
- Get certified—IOSA, ISAGO
Key ingredients for risk reduction

- **As an industry:**
  - Unify and standardize data collection – first step in gathering the key stakeholders to the table, most notably the markets.
  - Centralizing the data storage and analytics provides the markets with a valid means to quantity the risk and thus price the risk from an underwriter point of view, a more accurate measure of risk.
  - Type of data and analytical management ensures the rapid deployment of mitigations and corrective actions to airline and ground handler stakeholders.
“See you in court”

- Saleema Brohi, Co-Head of Aviation & Partner, Hill Dickinson
- Richard Gimblett, Senior Partner, Holman Fenwick Willan
- Elizabeth Holton, Consultant, IATA
- Desmond Barry, Partner, Condon & Forsyth
CRIMINALISATION OF AIRCRAFT ACCIDENTS

IATA WORLD FINANCIAL SYMPOSIUM

ABU DHABI, 18 SEPTEMBER 2014

Richard Gimblett - Holman Fenwick Willan
Elizabeth Holton - IATA
Saleema Brohi - Hill Dickinson
Des Barry - Condon & Forsyth
Criminalisation of aircraft accidents

- Is it really an issue?
- The typical charges that can be brought
- The consequences of criminal investigation and prosecution: both for corporates and individuals
- Risk management of the issue
Is it really an issue?

- Air Inter (1992)
- Concorde (2000)
- Milan Linate (2001)
- Crossair (2001)
- DHL/Bashkirian (2002)
- Helios (2005)
- Spanair (2008)
- Air France (2009)
- Henan Airlines (2010)
Criminalization Trend in Aviation

Figure 1: Number of worldwide cases of criminalizing human acts in aviation accidents and incidents per decade since 1950.

Dekker, Sidney: “Pilots, Controllers and Mechanics on Trial: Cases, Concerns and Countermeasures” (International Journal of Applied Aviation Studies, 2010)
Typical charges

- Corporate prosecutions
  - corporate manslaughter
  - health and safety legislation
  - aviation safety regulations

- Individual prosecutions
  - culpable homicide
  - breaches of aviation safety regulations
The consequences

- Criminal sanctions
  - Fines and remedial orders
  - Imprisonment
- Reputational damage
- Loss of livelihood
  - Directors and senior management – possible disqualification
  - Operational staff – possible licensing and disciplinary action
- Damage to morale
  - Impact on "just culture" and open safety reporting
- Financial cost and expense
  - management and staff time
  - legal costs and expenses
- Most of the above are possible even in the event of acquittal!
What can be done to manage the risk?

- Corporate governance issues
  - Safety reporting procedures and policies
  - "Just culture"

- Risk management
  - Identify and eliminate "systemic" failures and weaknesses

- Emergency response planning

- Insurance
  - AVN 108 and other options
Lawyers for international commerce
hfw.com
Are Criminal Defence Costs Covered By Your Insurances?

World Financial Symposium
Abu Dhabi, 18 Sep 2014
There is NO certainty of cover for criminal defence costs under your airline aviation insurance program
Criminal Defence Costs and Insurance

- Defence costs for accusations of criminality following an accident, (e.g. accusation against an airline employee), have been covered by insurers as a GOODWILL gesture.

- It undoubtedly maintains a cohesive and coordinated response to the loss in the best interests of the airline and insurers.
Criminal Defence Costs and Insurance

- BUT . . .
- Underwriters have sought legal opinion on whether there is a legal obligation to offer any criminal defense cover and
- THE ANSWER IS “NO.”
Criminal Defense Costs and Insurance – some good news!

- Insurers have agreed to give formal and limited (USD25M) cover for CORPORATE MANSLAUGHTER DEFENCE COSTS VIA AVN108.

- This clause requires information about the status of corporate manslaughter type legislation and claims within individual countries. This information was sought by IATA from each airline member’s legal department.

- PLEASE LET YOUR RESPECTIVE LEGAL DEPARTMENTS KNOW THAT THIS INFORMATION IS URGENTLY SOUGHT
Going Forward

- Make sure your Directors and Officers (D&O) policy is extended to cover criminal defence costs.
- **BE AWARE PILOTS AND ENGINEERS ARE NOT GENERALLY CONSIDERED DIRECTORS OR OFFICERS**
- Shout at your legal department for the requisite information on AVN108.
- Consider whether you want increased certainty of cover?
Going Forward—do you need more certainty?

- Consider whether you want AVN108 extended to provide some certainty of cover for criminal defence beyond corporate manslaughter-type claims.

Advantage:  Certainty of cover
Disadvantage:  Limit
Advantage:  You can top up the USD25M via specialist excess policy
Disadvantage:  Additional cost
Track Closure

Nick Hughes
Senior Partner
Holman Fenwick Willan
Risk Management in a Changing World
Networking Lunch