

Aviation

COMMENTARY

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Another Level of Justice: The Public Apology

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Introduction

On Jan. 8, 2003, Air Midwest Flight 5481 crashed near Charlotte, N.C., killing all aboard. As in most commercial airline cases, the individual families resolved their respective claims confidentially and quietly moved on without further public comment until May 6, 2005, when the president of Air Midwest, as a term of the settlement in the crash case, publicly apologized to the families involved in the accident.

Client Commitment

In most aviation disasters, the surviving families experience the five stages of grief at varying rates. After the denial stage, the next phase is usually anger. All surviving family members want implementation of corrective action so that no other family will have to experience a similar loss in the future.

Some surviving family members want revenge, most at least want a full investigation, some a private audience and a very, very few demand full accountability through either a public apology or trial. For some families this need for public acceptance of responsibility by trial or public statement rises to a level of determination above all else.

The Shepherds were such a family. Pastor Douglas and Tereasa Shepherd lost their 18-year-old daughter, Christiana, in the crash. They were missionaries, committed to values of acknowledgment of wrongdoing and contrition. They became dedicated to obtain assurances of safety changes, a public announcement of these changes, acknowledgment of responsibility and an apology for this disaster. This unfaltering commitment by the family of the deceased provided the impetus to overcome the many obstacles to obtaining this result.

Defendants' Response

Most defendants appear to be guided by the traditional legal thinking of their defense counsel and are averse to

publishing any kind of apology, acknowledgment of fault or other public statement. This refusal to think "outside the box" is an impediment to helping families get through their loss, and it deprives the defendants of the opportunity to enhance their public image in the aftermath of tragedy. Airlines are public service providers. The reputation of their management for being truly customer-oriented could be developed on this occasion, rather than ignored.

Initially the Air Midwest defendants had a hard time accepting that the Shepherd family was committed to requiring a public statement. It wasn't until the Shepherds took the position that they were not willing to discuss compensation whatsoever until their safety concerns and public apology had been addressed satisfactorily that the defendants conceded serious consideration to these issues.

Once the breakthrough on the concept occurred, the next impediment with the defendants was the "wording." This again provided a ripe opportunity for both the airlines and its legal counsel to craft a meaningful statement.

At the same time there were concerns about impairing the defendants' indemnity claims against other parties involved in the accident. Specifically, in our case, the manufacturer that wrote the maintenance manual refused to participate at all in the settlement funding or the apology. This lack of participation was handled in the words of the apology itself: "Air Midwest and its maintenance provider, Vertex, acknowledge deficiencies, which together with the wording of the aircraft maintenance manuals, contributed to this accident."

In the end, the public apology component of the settlement expanded the services provided by defense counsel and, ultimately enhanced the public image of these defendants and provided all people present at the apology ceremony a very moving experience. Of inestimable importance, the public apology and expressions of determination to put safety first gave a sense of solace and closure to the families that could not be achieved with money alone.

Judicial Approach

Similarly, the court was skeptical about the clients' need for a public statement. A trial is considered to be a search for the truth that results in the presentation of evidence, argument, deliberation and ultimate verdict; nowhere does a public apology fit in the process. However, given the judicial emphasis and focus on alternative dispute resolution, the public apology should not be overlooked.

This case was assigned by the district judge to a magistrate judge for mediation. The magistrate was, at the outset, likewise skeptical and insisted on speaking directly with the clients to test their mettle. The magistrate even requested that he be permitted to speak to the clients without their counsel present. This request was refused by the clients in accordance with their attorneys' recommendation.

However, the magistrate judge did "cross-examine" them on the nature, extent and dedication to their request for a public apology. Once the magistrate was convinced of their *bona fides*, that conviction was communicated to the defense and ultimately to the district judge.

The Negotiations

Two formal mediation sessions were conducted, the first with a retired judge and the second with the sitting magistrate judge as the appointed mediator. Both failed because neither the defense nor the mediator believed a public apology was a genuinely material part of the negotiations.

The defense, initially, appeared to think the demand was some sort of negotiation tactic cooked up by the plaintiffs' counsel. It took time, patience and tenacity to convince everyone that the apology was the clients' firm demand, without which the case could only be resolved by trial.

The threat of a trial is naturally enhanced if punitive damages are not ruled out, but the unavailability of punitive damages does not necessarily negate the threat. The defendants will always know there is the possibility of a runaway verdict and there will most certainly be further public exposure and attorney fees.

In our case punitive damages were still in the mix since there was no ruling to the contrary and every member of our mock juries had awarded them. Incidentally, the importance of properly and professionally administered local mock trials cannot be overstated, and they served a vital role in preserving our rights to pursue punitive damages and obtain a public apology.

The plaintiffs' counsel made it clear from the inception of the apology negotiations that there would be no reduction of the monetary settlement in exchange for the public apology. The plaintiffs insisted they would not negotiate the amount of settlement until the defendants made a commitment in principle to issue a public apology as a term of the settlement. After the commitment of the clients to, and the refusal to trade settlement money for, a public apology became clear, and a firm commitment to the apology was received, the negotiations concerning both the amount and the apology proceeded in parallel.

The apology was negotiated through defense counsel while the amount was negotiated through a senior insurance adjuster. The wording was suggested initially by the clients and all changes had to meet their approval.

Judicial intervention in the negotiations was minimal, except that the magistrate (in his capacity as mediator) made sure the negotiations were progressing at all times on both the apology and the amount, with indications that at all times he stood ready and willing to reconvene the mediation if and when necessary to help resolve either issue. At the settlement approval hearing, the judge commented that he had learned from this case that the best way to accommodate settlement was to "get out of the way."

Implementation

The Shepherds invited all the families of Flight 5481 victims to the apology ceremony. To make this a truly public event, but not result in a media circus, they also invited one newspaper and one television reporter to document the proceedings. The Shepherds thoughtfully chose the location for the apology to take place at the crash memorial site at the Charlotte/Douglas International Airport.

The actual accommodations for the event (chairs, canopy, flowers, public address equipment, etc.) were provided by an event planner chosen after conversations between our Los Angeles office and a number of qualified businesses found through the Internet.

The Result

The apology ceremony was held May 6, 2005, in Charlotte, N.C., at about 11 a.m. at the memorial for the crash of Air Midwest Flight 5481.

Who Attended

The ceremony was attended by about 20 family members and friends of the 21 killed in the crash, as well as Air Midwest President Greg Stephens; Vertex Aerospace (now known as L3 Communications and previously as Raytheon Aerospace); Baum Hedlund attorneys Ron Goldman, Michael Baum, Paul Hedlund and John Greaves ...

There were also the two reporters and a videographer and a photographer hired by us to record the event.

Initial Comments Before the Public Apology

Good morning ladies and gentlemen. My name is Ron Goldman. I am here with my partners, Michael Baum, Paul Hedlund and John Greaves and our lead paralegal... We are the heart of the aviation team that has been active for the Shepherds ... in this litigation. My role here today is I will be introducing the public apology and then I will have a few brief remarks after the public apology is completed. I want to acknowledge the presence of the Shepherds ... and each of you that have come here today to share this experience.

As a material part of the settlement and the terms which were agreed upon, Pastor Douglas and Mrs. Shepherd required a public apology to be made. Air Midwest and Vertex ... have agreed to that condition and that's what brings us here today. I am gratified to be able to tell you that Air Midwest and Vertex have taken the burden of the statement you are about to hear, with, we believe, a seriousness and sincerity of purpose. Accordingly and commendably they have designated the president of Air Midwest to come before you, and the general public, and deliver the public apology.

Apology by Air Midwest's President

My name is Greg Stephens and I am here to offer a statement on behalf of Air Midwest and also of Vertex. We are here today to remember the victims of Flight 5481 and to offer our apologies, our condolences and sincere sympathy to the surviving family members of the passengers and crew who perished in the Jan. 8, 2003, crash of Air Midwest Flight 5481. We are deeply saddened by your loss.

The National Transportation Safety Board's investigation disclosed errors which caused and contributed to this tragic accident. We participated fully with the NTSB in the investigation and understand our roles leading up to the crash. Air Midwest and its maintenance provider, Vertex, acknowledge deficiencies, which together with the wording of the aircraft maintenance manuals, contributed to this accident.

This tragedy has caused us to investigate rigorously our policies and guidelines regarding aircraft maintenance, operation and safety in general. We have taken substantial measures to prevent similar accidents and incidents in the future, so that your losses will not have been suffered in vain. We have also implemented or are implementing the applicable NTSB safety recommendations following this accident.

We are truly sorry and regret and apologize to everyone affected by this tragic event.

Closing Comments by Ron Goldman

Last February I was returning from Philadelphia and I picked up a newspaper at the airport ... and I saw something that was rather poignant, and I think important for today, for it talked about a settlement that had occurred in a wrongful-death case, and there is a little box here that says "Family Reaction," and the family reaction, even though they had received a substantial settlement, says: "We wanted accountability, we wanted admission of responsibility for Jessie's death, apologies from all parties and open access to all documents. We received none of those things."

Well, I thought that was something that heightens what I believe is a need that most people have. It is an expression of a quest for justice.

Justice means more than just an adequate settlement or verdict, even though the economic part is vital and an important part of the equation. But justice is given a fuller meaning when those responsible for contributing to the cause of a tragedy acknowledge their role, accept accountability, and pledge to work harder to root out and correct both the mechanical deficiencies and any culture or attitude that may allow compromises with safety to go unchallenged. Justice is universal and it is timeless and it is a human need.

While absolute justice, like perfection, is more of a goal than something that can be achieved absolutely, our quest for it should never be cynically thought of. To the contrary, it should be pursued with vigor and ardor and conviction, with honesty, with ethics and skill, and most importantly, with courage. For it takes more courage to seek justice than to seek vengeance.

Aviation safety and justice owe a debt of gratitude to each of you. Not only those who are here, but each of you who wanted to be here. But we especially acknowledge Pastor Doug and Mrs. Shepherd for the fortitude and courage that they had and have to stand by their principles and their quest for a measure of justice to arise on behalf of all from this tragedy, to the end that no person aboard Flight 5481 shall have died in vain. It is their hope and ours that we have delivered here today for each of you some measure of justice.

* Paul J. Hedlund is a senior partner and trial lawyer for national law firm Baum Hedlund. Mr. Hedlund has represented victims of wrongful death and personal injury for more than 30 years and is a member of the firm's aviation team, which has represented hundreds of victims of aviation disasters. Ronald L. M. Goldman is lead trial counsel and a senior partner at Baum Hedlund and also a member of the firm's aviation team. Mr. Goldman has been practicing law for more than 40 years and serves on the plaintiffs' executive committee handling the Sept. 11, 2001, tort litigation.