

2000

Airline Claims Panel

Recommended Citation

Airline Claims Panel, 65 J. AIR L. & COM. 527 (2000)
<https://scholar.smu.edu/jalc/vol65/iss3/6>

This Symposium is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

34TH ANNUAL SMU AIR LAW SYMPOSIUM

AIRLINE CLAIMS PANEL

NK = H. NORMAN KINSY
CH = CHRISTA HINCKLEY
CB = J. CRAIG BUSEY
GR = GREGORY L. RIGGS
LW = LAURA WRIGHT

NK: We have put together another blue ribbon panel this afternoon, and I think you will find what the panelists have to say to be of great interest. We wanted to get together a group of people for you who are intimately involved with the day-to-day workings of the legal departments of some of the major air carriers in the United States, and I think we've been able to do that quite well. Let me introduce our panelists, and before I do that I do want to—I have to thank our sponsors again. The luncheon was in part sponsored by Baumeister and Samuels, for which of course we're very grateful.

Now continuing in alphabetical order, Craig Busey, on my right. Mr. Busey is an undergraduate, graduate of Northwestern University, also obtained his law degree at Northwestern University, and has been in private practice before with a firm in Chicago, Illinois. But since 1986 to the present he has been with United Airlines as senior counsel in the litigation group, and as such of course sees much of the everyday claims—some big, some small—for United Airlines. We're pleased to have Craig with us today.

On my left we have Christa Hinckley. Christa has a Doctorate from the University of Denver College of Law. She, before that, got a Bachelors of Arts degree from Trinity University in San Antonio. She has been with AMR Corporation for the last 14 years, since 1986, as a staff attorney, then a senior attorney, and finally as managing director of the insurance and risk management department from 1994 to the present time. As such, Christa is on the Go Team for American Airlines and has been

heavily involved in several accidents, which range from the ATR at Roselawn to Flight 965 in Colombia and a number of others. She's been involved with the setting up of command centers for risk management and the American Eagle Customer Assistance Relief effort at well. Help me welcome Christa Hinckley.

Next on the panel we have Greg Riggs. Greg received his undergraduate degree from the University of North Carolina in 1971, a law degree from Oxford University in 1976 and then a J.D. from Emory University School of Law thereafter. In 1979 Greg joined Delta Airlines, where he's been for the past twenty-one years, holding positions of increasing responsibility until 1998, when he was named to his present position as vice-president, deputy general counsel, assistant secretary, with generally overall responsibility for the administration of the Delta law department.

Finally I'm pleased that Laura Wright could join us today. Laura has been with Southwest Airlines about twelve years, and in 1998 was given the position of treasurer of Southwest Airlines. Of course I asked Laura, "Laura, how does a treasurer get involved with airline claims?" And she said, "Well, I run the place." I'm taking liberties, of course, but as treasurer for Southwest Airlines Laura is in charge of a lot of things, from corporate finance strategy, capital market and aircraft financing activities, aircraft acquisitions and indeed the insurance programs. So we're pleased to have Laura with us as well.

Let me begin this basically—we're going to—we've got a lot to cover and we've got a short time to do it in, but we're going to start off with mass disaster. And I'm going to ask Christa Hinckley to come up and basically give you an overview of what the airlines do, both in-house and on the scene, when confronted with a mass disaster. Christa?

CH: Well, thank you. And also I thank you for having the opportunity to be the kickoff speaker Friday afternoon after lunch. So I will hopefully try to keep everybody awake, but I'll just do the best I can.

One of my coping mechanisms in this job, if you can put it that way, is to look for little phrases to live by, some of which can be humorous; in fact, the more humorous, the better. The first phrase that we use a lot in my department—not humorous, but we use it a lot—is a very good one to live by, that you prepare for the worst and then hope for the best. I wish I knew who'd said it first because I'd like to give them credit for it. One of my per-

sonal favorites is, "Experience is something you get after you need it," and that's very true; I have found that out in my life. And then another favorite of mine, from Charles Schultz; can everybody see that? And that's true too, quite frankly. It is kind of a dumb system, but it seems to be the one we have.

First I'm going to address what airlines do when the bell goes off, so to speak, and I'm going to obviously be speaking from my perspective at American. I know my colleagues from United and Delta will also expand on this. The first thing that happens is a Go Team is basically called and deployed. And this is a team of predesignated people. They're professionals; they're basically on call twenty-four hours a day, seven days a week. It includes trained accident investigators, your corporate and public communications people, medical professionals, risk management, technical professionals such as pilots, flight attendants, mechanics, and then our CARE Go Team, our Customer Assistance Relief Effort Go Team.

Now, what is risk management's role in all of this? And when I say risk management I'm not talking about me; I'm talking about my entire department, because we really do function as a team and everybody is involved. Some of us go to our System Operation Control, SOC, where they assist the CARE team members that are stationed there in the performance of their duties. Some—they also assist in passenger name record reconciliation and they authorize disbursements and spend money. We're known as the money people, if you will, at the site.

We're sort of a jack of all trades. Again, we authorize disbursements and that's one of the primary functions, but I think our main purpose is just to support and help other departments and functions to try to resolve the crisis just as quickly and humanely as possible. Then we have the group that's left back at headquarters who are in charge of still running the day-to-day operations of the claims group, and are authorized to get outside help if necessary.

Now, this is just sort of a brief overview of what the AA team looks like at the site, just to give you an idea. This is not meant to be exhaustive; there are other functions and roles that are not listed here, such as security. But the main person in charge is our managing director of operational investigations, and all these different functions have their own duties and tasks.

As far as risk management, I divided our functions into three basic groups or functions, if you will; whatever. First with respect to the passengers, we work very much at the site with the

manifest reconciliation, and also identification of passengers and their remains. Now in the U.S. this is—the person predominantly responsible for this of course is the medical examiner or local coroner; he's the person in charge. He is now assisted by the NTSB Family Assistance Group, and we are there just to help in any way that we can. If they need anything in particular, we will certainly try to get it for them.

Outside of the U.S. it's a little bit different, to say the least. The local authority is in charge of identifying passengers. In Colombia it was a group called the Civil Aviation Administration and they were in charge of doing that. And because of the lack of resources many times that these countries have, we are in charge of getting special assistance if they need it to assist them in their tasks.

We also interface on the passenger side with funeral homes both across the United States and internationally. We help the NTSB Family Assistance Group directly. We get them meeting rooms, conference sites, site visits, memorials. We work with them very closely on all of this. We also obtain and get mental health professionals guidance for family members and us; actually family members and some of our own staff, because this is very traumatic. And then we are in charge of obtaining hotels, hospitals, transportation for survivors and their families. We also do that for the CARE team; we get them hotels and cars and transportation. And this is no small task, because we have deployed up to 600 people in the CARE team effort; that was in Cali. We also take care of their out-of-pocket expenses.

We also assist the NTSB accident investigation team; again, hotels, conference rooms, if they have special requests with respect to the investigation. We support our own accident investigation team with basically the same things; computers and faxes as well. We give the medical professionals that are on site whatever assistance they need. We obtain the necessary security for the site if possible, and then many times we liaise with the local government officials and national government officials that are involved in the accident investigation. And this, in addition to the NTSB, is the FBI, the FAA. It could be the DOJ, could be the Department of State, and then of course you've got local authorities as well. I think I heard—and I don't know if this is accurate—but I heard that at TW 800 they had eighteen different government agencies involved, so that can be pretty extensive.

With respect to the site we are basically in charge, working with our insurance companies, of getting the records removed and stored. And then of course we have to take care of the environmental issues that occur as a result of the crash, whether it's a fuel spill or whatever, and we're responsible for that. And many times we also just try to help out the local airport, which is usually under a lot of strain at that point.

Another one of my phrases, if you will, "Every business has the possibility of a crisis." It doesn't make any difference what line of business you're in; it doesn't have to be an aviation disaster. And as counsel to your clients, I would recommend that you get your clients to focus on what possibly could go wrong in their business, because it's crucial that it is dealt with properly and promptly. I would also highly recommend reading this article by Norm Ardesty, "Managing the Crisis you Tried to Prevent." It's a very good article. His quote here is very true, in that almost every crisis can help you re-establish competence in your company or destroy it completely, in effect. So it's very, very important that your clients realize that this is not something they can put off. This is something that they need to think about.

Some other examples of disasters, the Exxon Valdez, of course, the E. Coli. And then the best-handled disaster according to most experts is the Tylenol case, which was handled very well.

I've been asked to address, if you will, the difference between a domestic crash and an international crash. The Aviation Disaster Family Assistance Act of 1966 predominantly controls our actions in a domestic crash. In addition—this is going to sound strange—but in addition we are I think very spoiled in this country when it comes to emergency response and search and rescue. We have a tremendous infrastructure in place to deal with these type of situations. That is not true of international locations.

The first thing you have to do, if you're going to counsel your client on how to respond to a disaster in an international location if they have foreign operations, is basically throw out all your assumptions and start over and start from scratch. For example, if you are planning to have X number of computers in place to help you handle the disaster or the crisis, better rethink it. Because particularly in third-world countries like Colombia, you don't have the infrastructure to have the computers. You don't have the phone lines. You don't have simple electrical plugs necessary enough. And so you have to adapt yourself to

working in that kind of environment; they are not as computer-dependent as we are.

Cell phones, however, are very prominent. And I'm sure since 1995 when I was in Colombia they have gotten more so. So you have to adjust for the fact that everybody's going to have a cell phone. So you throw out the assumptions that everything you have is going to work. Then you try to think of the worst possible disaster that you can think of, and then plan for it. On 965, it was not only a foreign location but the aircraft was at the top of a mountain. There were no roads. It was a jungle. The top of the mountain usually had fog and rain on it, so it limited the use of the only two helicopters that were there. There were snakes. And on top of it all it was a red zone; in other words, it was guerrilla territory. So, that was pretty bad. Anyway, in order to deal with that, once you imagine your worst possible scenario then you need to investigate, plan and drill, with the understanding of the limitations of the environment that you're working in. And for this, your client has to involve his local people; they will know what limitations they have and what they can work with.

And let me give you an example of some of those limitations that we experienced in Colombia, so that you can understand how important it is to plan for these contingencies. Now in Colombia, for example, there was not enough emergency personnel or assistance. They basically had to call out the Colombian military to help with the recovery effort, if you will. And in fact, a little-known fact, four of the military died; four people died in the whole process of the search and rescue effort. There's very little on-site medical help, very little supplies. We shipped in body bags, X-ray machines, gloves, you name it.

Mortuary facilities are very bad. For example in Colombia, the morgue was an open-air sports stadium in Buga, and we had only one truck that was a refrigeration truck. And December in Colombia is summer, so that was a bit of a problem. Medical facilities, the hospital in Cali that treated our survivors did an excellent job. They still have limitations; we shipped in X-ray equipment, we shipped in special beds. As I said before, we will bring in a forensic specialist to help with the identification process. Security was nonexistent. Notwithstanding the fact that we had most of the Colombian military there, they could not secure the site. And we had family members climbing up the mountain alongside our accident investigators, as well as the Colombian

military. And we also had looters; there was extensive looting of the site, and the military just could not prevent it at that point.

You will also have, as I said, insufficient telecommunications and infrastructures. You will have language barriers, of course, and that sounds—okay, that's obvious, Christa; you're going to have language barriers. But I don't just mean with the local authorities or the families. When we finally got pagers and cell phones in Cali, Colombia, all the instructions were in Spanish. And the pages, when you got paged the message was in Spanish, so it was really of no use whatsoever. So get your client to think about establishing a local, on-site crisis center. Make a contingency plan. Establish a chain of command. Figure out how to communicate; use satellite phones if necessary. Identify which vendors you're going to use in advance. You don't want to be establishing a relationship in the middle of a crisis or at two o'clock in the morning.

And this foil is in here to emphasize that you need to expect the unexpected. With all the planning that you do and all the thought, you need to expect the unexpected. Tough decisions will have to be made fast and quickly. And I'll give you two examples and then I'll discuss two examples that we experienced personally in Cali. Number one was we were vaccinated, being vaccinated by our medical personnel for hepatitis A and D, and they brought supplies down with them. Well, the Colombian military saw that—and these are mainly people that are sixteen-, seventeen years old; they were sixteen-, seventeen-year-olds—and they couldn't understand why all these U.S. people were getting vaccinated and they weren't. So they demanded that they be vaccinated.

I called back up to the SOC, and I told them, "We have to get some hep A down here quickly, and we're going to have to vaccinate all these military personnel." Well, four hours later I circled back to SOC to talk to them about something else, and they're still debating whether or not they really need to get hepatitis A down to Cali, Colombia to vaccinate all these people. And I said, "Look, guys. They have guns, okay? I don't care what you think, but they have guns. Let's get the vaccine down here and deal with it that way." So don't second-guess who's on your side. That was an example of a totally unprepared-for circumstance.

The other somewhat unprepared-for circumstance was the FBI and the FAA—and yes, they do help you in foreign disasters as well as domestic, and "help" is in quotation marks—insisted

that the passengers be X-rayed, because they at that time thought it was possibly a bomb and the X-rays would help them determine that. Well, there was only one X-ray machine at the morgue facility; we shipped it in. It takes hours to do full-body X-rays. I can't tell you how long; eight hours. And again remember, it was summer. We had almost a near-riot on our hands, and we had to get the FBI and the FAA to back off of these requests so family members could recover their loved ones and start the process of grieving.

Finally, again this is somewhat similar to a previous quote, but this one is by Oscar Wilde. Once it's all over, you need to debrief. You need to understand where your mistakes are and you need to fix them. Never underestimate luck in a situation, and then don't ignore your own employees. Many of them will be traumatized as a result of the event, and will need special consideration.

NK: Christa, before you go, give us an idea of how many people were on the Go Team. How many folks from the airline did you have to take down to Columbia?

CH: It depends on the circumstance. But I would say we have about 30 people on the Go Team, and that includes the CARE Go Team.

NK: Okay.

CH: Not the CARE personnel, but the Go Team.

NK: Thanks. Yeah, that's great. Craig, tell us a little bit how United approaches the mass disaster.

CB: Well, what I noticed in Christa's presentation was there was an absence of any reference to lawyers. I am on our Go Team for accidents, and for three years United did not have to participate in anything like that. But within the next three years, just like that we did have three accidents, and it was pretty much a learning experience for everyone because none of us had gone through it. We hadn't had an accident in a number of years. But learning what the lawyer's role is in the crisis situation was very interesting, because I think we all have an inflated view of what lawyers do.

When you get to the accident scene—what we do when an accident occurs is we first set up a crisis center. And there's a crisis center in our operations organization where there are a number of chairs; we go and we share the information, set up a

net so that we have communication with the location where the accident occurred, with the maintenance base, with what we call Denver Key K, which is our pilots' center, and then we get everybody together so we can all share information at the same time. Within about an hour and a half after the accident to two hours, we send out the Go Team. And the Go Team consists largely, as Christa said, of the same kind of individuals, except we force a lawyer to go along. I think it's the "misery loves company" motive, but I was asked to go.

When I got to the site of the first accident, which was our Flight 811 in Hawaii, I really had no idea what my role was other than to be a resource, and I think what you find is that you just have to be very flexible. It's at best organized chaos, but you have no idea what issues are going to arise at any given moment, and you have no idea—you know, what legal issues you may be asked about. Or practical issues, because the issues aren't necessarily legal. What you also find is that the NTSB will not allow lawyers or insurance representatives to participate in the meetings or in the investigation. So I often tell people that I've been thrown out of conference rooms at some of the best hotels around the world, and that was a shock.

So I think what you do is you're immediately humbled, and find that you are there as a support mechanism. Because you quickly learn, if it wasn't apparent already, that the purpose of being there is to find the cause of the accident and to take care of the survivors and the victims. The lawyer's role is minimal, as it ought to be. We protect the corporation as much as we can in that situation, but we are there to support everyone else. And the primary thing is to find the cause of the accident to make sure that it doesn't recur.

NK: Thanks. Greg, give us some insight from Delta's standpoint.

GR: Well, I agree with Craig's observations. And in addition to that, there can be a few issues of law in those first two or three days following an accident that require an in-house or an outside lawyer to weigh in on behalf of the company. One of the first issues that there can be some contention over is drug testing of surviving crew members. Management's view of whether drug testing is required may differ from the NTSB's view, and the lawyer can help walk through those obligations and defuse the situation.

Secondly, if crew members are unionized—for example, the pilots are unionized and there are surviving pilots—the Airline Pilots’ Association has lawyers on the scene. And their view of the obligations of the pilots and the obligations of management in communicating with each other can be in contention, and you can assist with that. In our case, our flight attendants are not unionized. And when flight attendants are called upon by the NTSB to give interviews to the Human Factors team, the flight attendants can be and typically are afraid. They don’t know what it’s okay to say. They are sometimes in one form or other of a state of shock, and they’re very nervous and they need a lot of support.

And one of the things that we have done in the past is to provide the support and the legal assistance in preparing them for their interviews, assuring them that all they have to do is tell the truth, and helping them to give their responses to the NTSB interviewers in an efficient—and try to keep their emotions under control—in an efficient way. But as Craig said, there is no clear—there may be hundreds of people on the scene of an accident. Each one of them may have a pretty good idea of what their task is. Maybe the lawyer is the only person on the scene that does not have a clear sense of mission, and it is a reactive rather than a proactive role.

NK: Laura, as I understand it, Southwest’s been blessed not to have had any mass disasters and so forth. But I understand that you have an in-house disaster plan ready to go as well; is that right?

LW: That’s correct. As Christa mentioned—well, as Norm mentioned—we’ve been fortunate to not go through this experience but we are preparing for the worst, as Christa suggests we should do. I think I strongly believe that you don’t know what you’re going to face, because as we look at every accident, study them, they all have unique facts and circumstances. But we have a written plan in place; an insurance representative is on the Go Team, and the primary purpose is to assist in really money issues and to do whatever we can. We’re definitely not running the show when it comes to a mass disaster; we’re really there to assist and facilitate and make sure that we’re focusing on the families and getting to the cause of the accident.

NK: Well, I hate to move on from this interesting subject but obviously we have a lot to cover, as you can tell from the agenda.

Most of the airlines that are on the panel today have significant legal staffs that range from twenty to forty lawyers on hand. Christa, how many lawyers do you have at American now? About fifty lawyers, and so forth. So they handle a lot of things on a day-to-day basis obviously besides, thankfully, mass disasters. Greg, one of the things we've talked about are these code share issues. Can you tell us what Delta's interest is in that respect?

GR: Global alliances and code sharing has reached the point where virtually every major U.S. carrier now puts its code on the flights that are being operated by foreign carriers. In the event of an accident, there are some fundamental questions that are starting to be raised, and there are far more questions than there are answers. And I guess the Swiss Air 111 accident is the one major event now pending that is teeing up some of these issues.

The fundamental legal threshold issue is, to what extent is a U.S. carrier to be exposed to liability following an accident on a code share flight operated by a foreign carrier, when it's their metal and it's their operation, but we had our code on that flight and we had some of our passengers on that flight? The Warsaw Convention obviously, drafted in 1929, did not contemplate the code share environment. So these are brand-new legal issues that are now being teed up for litigation, and we expect that it's going to take quite some time to work through those issues.

On a more practical level, each airline has to answer for itself to what extent should the U.S. carrier conduct operational or safety reviews of the carrier that it's putting its code on. And there have been numerous answers to that question by different airlines, and we're starting finally to see in the last year some norms emerging that probably will end up in a fairly common standard throughout at least United States experience. The Department of Defense, which is responsible for making sure that airlines that carry U.S. military personnel are safe—and that's a mandate to the DOD by Congress—have found that with the proliferation of code sharing relationships the DOD does not have adequate resources to conduct these safety reviews of carriers throughout the world, nor arguably do they have the legal authority to do that.

So they have come to the major U.S. carriers and called for common standards, and called for action by U.S. carriers to conduct those reviews. And as a result of those conversations, some

standards are emerging at the DOD level that now the DOT and FAA are paying attention to. And I suspect that within the next six months or so we'll see a fairly common standard being followed by all the major carriers based on IKO standards, which have obviously universal acceptance.

NK: Christa, do you run into those code share issues as well?

CH: Yes we do, all the time. I would say that the—what I call the New Warsaw Convention that was adopted last year goes a long way to addressing some of these issues. Now, it hasn't been adopted—was adopted by the convention itself; it has not been adopted by the countries, and that still has to go into effect before that takes over as law. But it addresses a lot of these issues in terms of having its applicability to code shares as well as to the operating carrier.

I think I'm a little bit concerned about the initiative that the DOT is taking following the DOD with respect to these safety evaluations, if you will. Basically what Secretary Slater is doing is pushing a governmental function onto airlines, and I think that's very risky. I think that it's Yankee imperialism, that we're going to go off and tell somebody else that they're not operating properly. And I think there's some potential liability issues that will come out of it.

NK: Thanks. I have to shift to another subject, of course. And you probably heard, Greg, one of our speakers talk earlier about ValuJet and the criminal sanctions and activities that are coming out of it. Have you given some thought to that? Is that of concern to Delta?

GR: It's of significant concern to us because of the—the impact that we're seeing those trends having on our employees. In our view, and I think that it's a view shared by the safety community, it is very important in the safety arena to get all the facts related to an incident so that you can figure out how to do things better and safer in the future, and anything that has an impact of chilling employees wanting to come forward with information is going to compromise the integrity of our safety system.

We have heard, from some of our employees in the field, a reluctance to talk to the FAA, for example, because they've heard about ValuJet, they've heard about SABRE Tech, they've heard about the American Airlines problem with hazardous goods recently, and they think that maybe they need a criminal

lawyer before they can talk to the FAA. That's an overreaction on their part and we've been, to the extent that has come up, addressing it. But I think it does send a signal, and it is an indicator that the use of the criminal law to enhance aviation safety has a downside. And I'm not sure where the right balance is, but I think it's probably time for some serious reflection on those issues before we get too much further down the road.

NK: Well, the whole landscape obviously is changing, with new equipment, new actions, and that sort of thing. One of which we've had speakers address in the past, the inclusion of defibrillators on aircraft. Craig, what does United think about that?

CB: Well, this I think falls in the category of "damned if you do and damned if you don't." We have a lawsuit that's pending now, that I can't comment on a lot obviously, where an individual died aboard one of our airplanes, and was pronounced dead when the airplane landed. And the lawsuit that followed by his estate, by his spouse, was because we didn't have a defibrillator on board to be able to assist that individual. Obviously there are a lot of issues that go along with that as to whether or not the defibrillator would in fact have saved the life or would have been effective in that particular circumstance, but it's an issue that we end up fighting.

The concern that's been expressed by some people is now that we're putting defibrillators on our airplanes—and that project is under way and is either completed now or will be completed soon—is what happens when the defibrillator is used and we get sued for the misuse of the defibrillator? It I guess lends itself to the creativity of the plaintiff bar, among other things, and the propensity of the American people to blame someone for everything. But we anticipate that those issues will come up as well, although we are clearly training all of our flight attendants on the use of the defibrillators.

And for anyone who knows these defibrillators, they're quite sophisticated. One of the reasons we were not able to put them on before is because the technology was not appropriate. But now, if you attach the defibrillator to an individual and turn the defibrillator on, the defibrillator will determine itself whether or not to release an electrical impulse. So there's not a lot of difficulty to using it, but again we anticipate that there will be plenty of issues.

NK: Well, and another major issue that's coming down, as we've already had addressed here at the symposium, are the rage cases; air rage and so forth. How is United coming down on that issue?

CB: Well, we have a zero-tolerance policy at United with regard to our employees, and we have promised our employees that they are entitled not to be subjected to abuse or physical assault by our passengers or by anyone else. So in the situation where there is an abusive or disruptive passenger, it's United's position that we will support the employee. We will encourage them if they would like to pursue a criminal complaint against that individual and will advise them as to their rights, as to what their civil claims may be, although United obviously will not participate in that kind of an action.

The frustration, one of the frustrations that we've experienced is number one, finding the appropriate jurisdiction; encouraging the appropriate prosecutor to take action. Because you have state jurisdiction, you have a possible federal jurisdiction if you get the U.S. Attorney involved, you have the FAA which could be doing this. But you all have to understand that although there are legal systems in place, when the incident occurs, our employees are standing there on the jetway or at the terminal trying to figure out what to do and trying to figure out who to get involved. So it becomes a situation of great immediacy, and then the follow-on to try and determine who it is that's the appropriate entity to take on the project is a difficult one for us. Then once you get there, you have to convince a court that this is a serious enough matter to actually act on. So it's a very difficult, frustrating thing for the airlines.

NK: Laura, obviously there are a myriad of other cases that the airlines deal with, from slip and falls, overhead bins and passenger terminal areas and that sort of thing. How does Southwest's legal department handle that sort of thing? How are you set up to handle that sort of thing?

LW: We actually—we actually handle the—the insurance claims really come out of our insurance group, and our legal department gets involved on high-profile cases, in discrimination. Not as much on the slips and falls and overhead bins; we work primarily with our underwriters and outside defense counsel on the big cases that set precedent and are high-profile. Our legal department has a very active role with the outside defense

counsel. But on the overhead bins, slips and falls, we have—they're fairly—the most common of what we see, and we work with a lot of the same firms on those.

NK: And Christa, what role does American play, for instance in the selection? Obviously fifty lawyers can't handle all the litigation that goes on over the fifty states, even if you were admitted in all those fifty states. What role does your law department have in the selection of defense counsel, for instance?

CH: Well, first I would say that we're structured very similar to Southwest, in that the legal department does not really get involved in the day-to-day matters. They're very much involved in the high-profile matters that you said, and we obviously keep them in the loop on the day-to-day matters. But most of those cases are handled by claim adjusters within my group that will deal directly with outside counsel and the insurance company. And I would say on selection of defense counsel, it is a joint effort between the insurance company and our group as to having a predesignated list, if you will, of counsel that we have approved and agreed to use, that of course is subject to change. And it also is of course vetted, if you will, by the legal department, and we're always looking to make sure there are no conflicts. But that's basically how we go about selecting.

NK: Does American in fact designate its selected defense counsel with the concurrence of your insurers?

CH: Yeah. I would say we have—each party has a veto right. In other words if I say, "Okay, we've used this attorney, we like this attorney, can we put them on the list," if the insurance company has had problems with that attorney or a bad experience and doesn't want them on the list, then obviously they don't go on the list. And vice versa; we've had problems with counsel that the insurance company wanted to use. So it's pretty much a joint decision-making process.

NK: How does that work at Delta, Greg?

GR: Well, we're in a transition period now with a new director of risk management, and this new leadership I think will result in changes. Generally I think though we're going to end up probably in the same position that Christa and Laura are, and that is that we will be involved in high-profile cases and mass disaster cases. But when you carry 110 million passengers a year and you have a million flights a year there is a certain volume of

claims that results from that, and the claims experts need to deal with those things on a daily basis.

NK: And is that the same as United?

CB: It's pretty much. We have—our law department consists of twenty lawyers, and of those only seven are litigators. So we rely very heavily on our insurer to designate counsel and to handle especially the routine, day-to-day slip and fall cases, the moving sidewalk cases, the things of that nature. I try to review every complaint that comes through that is an insured matter and make a determination as to whether we want to have a greater participation. And again, same kind of criteria that Laura mentioned, and that is if they're high-profile cases, if they're cases that have a significant public relations impact on United—cases involving disabled passengers, for example, which have a great potential for exploding—those are the kinds of things that we participate more closely. We find that our insurers are very receptive to our desire to have particular counsel in particular cases if it arises, but for the most part we're going to rely on them for that. And unless we have a particular problem with an attorney, we'll let them make that choice.

NK: There's a lot of other major litigation out there, obviously; class actions and that sort of thing. Greg, how deeply does Delta's law department get involved in actually handling that sort of major class action lawsuit?

GR: Well, in those major cases we are heavily involved, and very closely not only monitor but are fully engaged in the cases all along the way. One of the things that you had on the list, Norm, was frequent flier claims, and this is an area where we have learned that we are losing a lot of revenue from frequent flier brokers who are selling sky miles unlawfully, and we've been quite successful in going after them and getting injunctions against those practices. Now we're seeing that on the Internet the frequent flier coupon brokers are back in business in a new medium, and we're looking seriously at how we can approach that.

NK: Well, we wanted to end up with something on a little lighter note, and as you can imagine the carriers end up with a number of major claims, a number of serious claims, and then a number of claims that are—humorous, I suppose, is the proper

word. And we've asked them to give us their claim of the week, so to speak. Christa, do you want to start off with that?

CH: I'll start off with my all-time favorite claim of the week. It's hard to come up with a favorite, but I think this one is my all-time favorite. We had a lady on one of our flights that got injured—slightly, I mean; she was not badly injured—when an overhead bin was opened. We had had nothing to do with the overhead bin; it was a fellow passenger, it had been opened by a fellow passenger, the object fell on this lady. Like I said, it was not really serious; in fact, she refused any kind of medical treatment and left the aircraft. However, she did file a claim against us later claiming that before she got hit on the head she was psychic, and then after she got hit on the head she had lost her psychic powers—and you know, lost wages, that type of thing. And our defense was, “Well, if you were psychic, you should have seen it coming.” There are more, but let somebody else do one.

NK: Laura, what's your best one?

LW: It's actually pretty hard to pick one. I just kind of looked at some of the more recent things that have come in. One of our more recent claims was a customer who has filed a suit because of poor service. And the specific allegations about poor service were it took three and a half hours to get his rental car, the ski lifts were too fast and he and his daughter were endangered by the speed of the lifts, the guests were noisy, the maitre d' in the restaurant was snooty and he had to wait to be seated, the waitress was rude, the prices were outrageous, and his hotel room had low water pressure. We really weren't named in it; it didn't have anything to do with us.

GR: I was going to ask how much you paid on that.

LW: [Inaudible] to get there, so—

NK: Craig, how about you?

CB: My favorite, it was not a frivolous claim but it was a situation a few years ago—I was just telling some of the guys at lunch—in which we learned about the incident in the newspaper. It seems that one of our DC-10s going into Seattle had apparently discharged what we call blue ice. And probably most of you know what that is; it's the lavatory discharge that happened to go on the outside of the airplane and as the airplane got lower, dropped off the airplane in the form of a large chunk of

ice. And the newspaper article said that the individuals whose house it hit, because it went through the roof of their house, was very upset that United did not call.

So the general counsel asked me to make the call, and I felt like I was doing a Bob Newhart routine. Because I called and I said, "This is Craig Busey from United, Ms. Simmons. How are you doing?" "Well, we're doing okay." I said, "Well, what happened?" She said, "Well, this thing came right through the roof of our house." I said, "Well, we can probably get you a new roof. Was anyone injured?" She said, "No, we were in the den and it fell in the living room." I said, "Well, thank goodness for that." She said, "It made a mess of my coffee table, though." I said, "Well, we can probably replace your coffee table." I said, "What did you do with it?" She said, "Well, we thought it was a meteorite, so we put it in the freezer." I said, "Well, we can probably get you a new freezer, too."

NK: That's a full-service claims department.

CB: Yes, indeed.

NK: Greg, how about you?

GR: Well, we received—a few months ago, received the shortest complaint we had ever received, and a perfect example I guess of notice pleading at its best. It simply said, "Delta, you have my dog and I want it back."

NK: Can we turn up the lights a little bit in the house? And we've saved about five minutes at the end here before we have to move on. If there's anyone who would like to ask a question of these folks, please feel free to do so. Well, I guess we answered it all, then. Thank you very much.

[END OF PANEL DISCUSSION]