



American Conference Institute's 4th Annual Forum on Defending and Managing

AVIATION LITIGATION

The Essential Forum That Shapes the Future of Litigation Strategies for Carriers, Manufacturers, Users/Owners/Operators, Maintenance Facilities, Insurers, and Their Counsel

June 26-27, 2012 | The Historic Omni Parker House Hotel | Boston, MA

Network and exchange strategies with these industry leaders:

Christopher Poreda
Federal Aviation Administration

Robert Combs
National Transportation Safety Board

Joanna Geraghty
JetBlue Airways

John G. Sams
Bell Helicopter Textron

Russell M. Mirabile
XL Insurance Company

James B. Blaney
British Airways PLC

David J. Hayes, III
Trans States Holdings, Inc.

Michael C. Henning
United Air Lines, Inc.

Kevin W. Murphy
Allianz Global Corporate & Specialty

David A. Seiler
United States Aircraft Insurance Group

Jarod Goff
Garmin International, Inc.

David Rheault
Air Canada

Cynthia J. Collins
FedEx Corporation Inc.

Mark J. Larson
Honeywell Aerospace

Karl Hennessee
Airbus S.A.S.

Featuring an Unparalleled Faculty of Judges, including:



Hon. Warren W. Eginton
U.S. Dist. Ct., D. Conn.



Hon. Lee Yeakel
U.S. Dist. Ct., W.D. Tex.



Hon. Louisa S. Porter
U.S. Dist. Ct., S.D. Calif.



Hon. Robert B. Collings
U.S. Dist. Ct., D. Mass.



Hon. Mildred E. Methvin
U.S. Dist. Ct., W.D. La.



Hon. Richard S. Schmidt
U.S. Dist. Ct., S.D. Tex.

Industry leaders from manufacturers, carriers and insurers and attorneys from top law firms will provide expert advice and strategies on:

- Key judicial decisions and legislative efforts, what they mean for the practice and their impact on your pending cases
- Navigating the complexities of foreign crashes/incidents, including FNC, criminal liability, venue and choice of law
- Incorporating recent developments in Federal Preemption and GARA into your litigation strategy
- Defending and managing claims involving passenger rights and privacy, TSA security checks and tarmac delays
- The International Aviation Market: How to counsel your clients on the pitfalls & litigation risks of doing business in BRIC Countries, London, Canada and Puerto Rico
- Innovative pre-trial and trial strategies for managing e-discovery, experts and jury communication



Plus, complete your experience by attending the Master Classes:

- A) Business Development Master Class: In-House Perspectives on Selection and Evaluation of Outside Counsel
- B) Working Within the Triangle: Expert Strategies on How Defense Counsel, Insurers and Companies Can Work Together to Successfully Resolve Claims and Litigation

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The premier industry event dedicated entirely to managing and litigating complex aviation-related claims returns for its 4th year, led by **the largest in-house/client presence ever** (from manufacturers, carriers and insurers), current and former FAA and NTSB officials, top law firms and renowned judges.

The aviation industry is at a crossroads, facing unique challenges including large scale products liability claims arising from malfunctions and crashes in and out of the United States, increasing tarmac delay and TSA security check claims alleging violations of passenger rights and privacy, and the potential for criminal liability arising out of airline operations and non-compliance. These challenges, coupled with the FAA and NTSB cracking down on connecting carrier liability and other safety matters and a creative and motivated plaintiffs' bar, make it critical that *counsel remain prepared to deal with constantly evolving regulations, case law and new theories of liability and ensure the best defense strategies in order to succeed pre-trial and at trial.*

Now in its fourth year, ACI's conference on **Defending and Managing AVIATION LITIGATION** is designed to offer even the most seasoned aviation attorneys valuable insights on solving these challenges and provide unparalleled networking opportunities with the likes of: *FAA, NTSB, JetBlue Airways, Bell Helicopter Textron, XL Insurance Company, British Airways, Trans States Holding, United Air Lines, Allianz Global Corporate & Specialty, United States Aircraft Insurance Group, Garmin International, Air Canada, Honeywell Aerospace, Airbus S.A.S., Dassault Falcon Jet...and many others.*

This is the only event in the industry that brings together federal judges, regulatory and enforcement officials, leading outside litigators and key in-house counsel and claims officers. By attending you will:

- Gain valuable business development strategies from **dozens of in-house counsel and claims officers** who will provide insight into case evaluation, managing the costs of litigation and working with outside counsel
- Improve your litigation strategy by **hearing directly from 6 federal judges** on how they interpret evidence and arguments specifically in the aviation context
- Get the latest updates on aviation investigation and enforcement trends from **current and former NTSB and FAA officials**
- Understand **the plaintiffs' perspective** regarding which claims are most attractive, emerging theories of liability and a plaintiff's approach to managing aviation claims

Plus, complete your 2-day experience by also signing up for the Pre and Post-Conference Master Classes:

A| Business Development Master Class: In-House Perspectives on Selection and Evaluation of Outside Counsel

B| Working Within the Triangle: Expert Strategies on How Defense Counsel, Insurers and Companies Can Work Together to Successfully Resolve Claims and Litigation

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Wendy Tyler

Head of Sales, American Conference Institute

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Who You Will Meet

- ➔ **In-House Litigation Counsel for Aviation Manufacturers, Carriers, Users/Owners/Operators, and Maintenance Officers**
- ➔ **Insurance Claims Officers**
- ➔ **Attorneys Specializing in:**
 - **Product Liability Claims**
 - **Complex Litigation**
 - **Class Actions**
 - **Multidistrict Litigation**
 - **Mass Torts**

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7:30 **Business Development Master Class** (see page 7 for details)

9:00 **Main Conference Registration and Coffee Served**

9:30 **Co-Chairs' Welcoming Remarks**

Cynthia J. Collins
Litigation Managing Director
FedEx Corporation Inc.

J. Denny Shupe
Partner
Schnader Harrison Segal & Lewis LLP

9:35 **In-House Counsel and Claims Officer Think Tank: Manufacturers, Carriers and Insurers Speak Out on Case Evaluation and Managing Costs of Litigation and Insurance**

The Manufacturers 9:35-10:35 (morning coffee break from 10:35-10:40)	The Carriers 10:40-11:40	The Insurers 11:40-12:40
<p><i>Mark J. Larson</i> Vice President & Chief Litigation Counsel Honeywell Aerospace</p> <p><i>Jarod Goff</i> Senior Litigation Counsel Garmin International, Inc.</p> <p><i>Karl Hennessee</i> Vice President, Litigation & Regulatory Affairs GCL - Central Legal Affairs Airbus S.A.S.</p> <p><i>James V. Marks (invited)</i> Deputy General Counsel Dassault Falcon Jet Corp</p>	<p><i>Joanna Geraghty</i> Executive Vice President, Chief People Officer JetBlue Airways</p> <p><i>Michael C. Henning</i> Managing Director & Senior Counsel - Litigation United Air Lines, Inc.</p> <p><i>David J. Hayes III</i> Vice-President & General Counsel Trans States Holdings, Inc.</p> <p><i>David Rheault</i> Counsel - Litigation Air Canada</p> <p><i>Cynthia J. Collins</i> Litigation Managing Director FedEx Corporation Inc.</p>	<p><i>Russell M. Mirabile</i> Vice President, Head of Specialty Claims North America XL Insurance Company</p> <p><i>Kevin W. Murphy</i> Director, Aviation Claims Allianz Global Corporate & Specialty</p> <p><i>David A. Seiler</i> Vice President United States Aircraft Insurance Group</p> <p><i>W. Timothy McSwain</i> Chief Claims Officer Aviation/Americas Allianz Global Corporate & Specialty</p>

Each of the above 3 panels co-moderated by:

Andrew C. Spacone
Of Counsel
Adler Pollock & Sheehan P.C.
(Former Deputy General Counsel and Assistant Secretary at **Textron, Inc.**)

Kathleen M. Guilfoyle
Shareholder
Campbell Trial Lawyers

Case Evaluation

- Settlement vs. litigation: evaluating the cost of defense versus chronic settlement and precedential value
- Reaching an early and cost effective resolution of class action claims
- How to weigh reasons for the economic resolution of a case against the prevention of future lawsuits through defense

Managing Costs in Litigation and Insurance

- Budgeting the overall expense of taking a case to trial with keeping a case resolvable without the need for trial
- Managing costs of defense in large scale litigation, including: Use of experts; *Daubert* rulings; Discovery and E-discovery burdens
- Staying in-house versus seeking outside assistance
- Understanding the key risks and protections offered by insurance coverage: Staying up to date on the latest trends and claims and preemptively adopting the necessary insurance policies
- Valuing Claims: Efficiently managing insured claims and maintaining workable rates; Assessing personal injury damages; Surge of post 9/11 wrongful death insurance settlements
- Ensuring compliance with the Warsaw and Montreal Convention

12:40 **Networking Luncheon for Speakers and Delegates**

1:50

The International Aviation Market: How to Counsel Your Clients on the Pitfalls & Litigation Risks of Doing Business in BRIC Countries, London, Canada and Puerto Rico

John G. Sams

Associate General Counsel for International Business
Bell Helicopter Textron

James B. Blaney

Senior Counsel, Americas
British Airways PLC

Lisa J. Savitt

Counsel
Crowell & Moring LLP

A panel of in-house counsel and outside counsel litigators will drill down on the pitfalls and future opportunities of the business aviation industry in:

- The BRIC countries: Brazil, Russia, India and China
 - o BRIC countries' aviation expansion, and its effect on the US, France, and the UK aviation industries
 - o New litigation and news
 - o FCPA/UK Bribery Act compliance
 - o The impact of the Bribery Act on carrier and manufacturer activities in BRIC
 - o How are the insurance markets coping with BRIC countries
- The US lawyer's place in:
 - o The London aviation market
 - o The Canadian market
 - o Puerto Rico and the Caribbean
- Globalization and how it's changing the aviation business model
 - o The impact of globalization on litigation and counsel

2:45

Aviation Year in Review: A Hands-On Examination of the Key Judicial Decisions and Legislative Efforts, What They Mean for the Practice and Their Impact on Your Pending Cases

J. Denny Shupe

Partner
Schnader Harrison Segal & Lewis LLP

Barry S. Alexander

Senior Counsel
Clyde & Co US LLP

Jennifer P. Henry

Partner
Thompson & Knight, LLP

Christopher A. Duggan

Partner
Smith Duggan Buell & Rufo LLP

- Legislative update: issues getting the most attention from Congress, including:
 - o Security issues
 - o Passenger delays
 - o Safety initiatives, including air races
- Connecting carrier liability and pilot duty rules
 - o Continuing issues arising out of Colgan Flight 3407
 - o Rules governing flights operated by small regional carriers

- o Rules governing pilots, including minimum qualifications, rest requirements and disclosure of medical records
- o Pilot duty time and what's being done to ensure that flight crew performance is not compromised
- o Recent cases in this area
- Ground service cases
 - o Are vehicles designed solely for use on an air strip governed by general motor vehicle regulations?
 - o What regulations currently govern
 - o Recent cases on this issue
- Energy related initiatives
 - o The effect on climate change and global warming
 - o How airlines can be exposed to liability for exhaust and gas emissions
- Helicopter liability
 - o Interaction between medical and flight crews in Aero medical and MedEvac incidents
 - o NTSB focus

3:45 Afternoon Refreshment Break

3:55 Government Update: NTSB and FAA Perspectives on the Latest Trends in Enforcement and Litigation

Robert Combs

Assistant General Counsel
National Transportation Safety Board

Christopher Poreda

Regional Counsel, New England
Federal Aviation Administration

Andrew B. Steinberg

Partner
Jones Day
(Former Chief Counsel of the FAA and Assistant Secretary of Transportation for Aviation and International Affairs)

Moderator:

Paul A. Lange

Managing Member
Law Offices of Paul A. Lange, LLC
(Former Staff Attorney of the FAA Eastern Region Assistant Chief Counsel's Office)

- Enforcement and litigation risks, including:
 - o Pilot duty time
 - o Criminal liability
 - Pilot medical and criminal history
 - Criminal prosecution for crashes
 - Policy concerns over criminal liability creating punishment for cooperating in accident investigations
 - o The latest on civil penalties and what risks most expose manufacturers and carriers
- Update on recent FAA cases and enforcement priorities
 - o FAA Reauthorization Act and its implications for the aviation industry
 - o The future of FAA safety management system (SMS) initiatives
- Update on current NTSB investigative practices and accident investigation
 - o Best practices and the role of counsel in working with NTSB investigators
 - o Obligations when NTSB is involved in litigation

5:00 **Incorporating New Developments Relating to Preemption and GARA into Your Litigation Strategy**

Frederick C. Schafrick

Partner
Goodwin Procter LLP

David P. Herman

Partner
Murray, Morin & Herman, P.A.

Kathryn J. Humphrey

Member
Dykema Gossett PLLC

Roger W. Clark

Partner
The Clark Law Group

Preemption

- Recent developments in the law, including:
 - o Tort claims arising from passenger disembarkation
 - Circuit split after *Abdullah v. American Airlines*
 - State law versus the FAA and ACAA
 - o Preemption under the Air Carrier Access Act
 - o Preemption claims against flight schools and flight instructors
 - o Lessor's liability exposure
 - Uncertainty of 49 USC §44112
 - *Vreeland v. Ferrer*
 - Aircraft, complete crew, maintenance and insurance (ACMI) wet leases
 - What liability does an owner not in possession or control of an aircraft face?
- The balance between preserving the jury function and uniform FAA standards
 - o Does certification by the FAA immunize a manufacturer?
 - o The effect of jury disagreements between states
 - o What result when FAA standards are silent on a particular issue
 - o The effect of preemption on punitive damages
 - o The preemptive effect of Warsaw and Montreal
 - o The state of the "knowing misrepresentation" exception
- Remedy vs. duty of care
- Scope of preemption
- Field preemption
- Conflict preemption

GARA

- Recent developments in the law, including:
- Are manuals aircraft parts under GARA?
 - o Flight operations manuals versus maintenance manuals
 - o Complications surrounding replacement parts: burden of proof, allowable claims, liability of OEM for part manufactured by another
- Determining whether GARA will provide a complete defense
 - o Preventing plaintiff attempts to get around claims barred by GARA
 - o The impact of statutes of repose

6:00 **Conference Adjourns**

Day Two – Wednesday June 27, 2012

7:30 **Continental Breakfast**

8:00 **View from the Bench: Renowned Judges Provide Unique Insights on How They Interpret Evidence and Arguments Specifically in the Aviation Context**

The Honorable Warren Eginton

Senior U.S. District Court Judge, D. Conn.

The Honorable Lee Yeakel

U.S. District Court Judge, W.D. Tex.

The Honorable Richard S. Schmidt

U.S. District Court Bankruptcy Judge, S.D. Tex.

The Honorable Robert B. Collings

U.S. Magistrate Judge, D. Mass.

The Honorable Mildred E. Methvin

U.S. Magistrate Judge, W.D. La.

The Honorable Louisa S. Porter

U.S. Magistrate Judge, S.D. Calif.

Moderator:

Jeffrey J. Ellis

Partner
Quirk and Bakalor, P.C.

9:30 **View from the Plaintiffs' Bar: Tailoring Your Defense Strategy in Light of the Latest Claims and Theories of Liability Being Advanced by Your Adversaries**

James P. Kreindler

Partner
Kreindler & Kreindler LLP

Ricardo M. Martínez-Cid

Partner
Podhurst Orseck, P.A.

- Which claims are most attractive to the plaintiffs' bar?
- Understanding the plaintiffs' approach to:
 - o Managing aviation claims
 - o Requesting and/or exchanging discovery
 - o Dealing with retained and opposing expert witnesses
- Claims and theories of liability that are on the horizon

10:15 **Morning Coffee Break**

10:30 **A Focus on Foreign Crashes/Incidents: Navigating the Complexities of FNC, Criminal Liability, Venue and Choice of Law**

Thad T. Dameris

Partner
Hogan Lovells US LLP

William D. Janicki

Of Counsel
Morrison & Foerster LLP

Ann Thornton Field

Member
Cozen O'Connor LLP

Gregory W. Carboy

Partner
Cowles & Thompson PC

- The latest decisions involving FNC and jurisdictional discrepancies
 - o Spanair Flight 5022 litigation
 - o Air France 447 litigation
 - o US Air suit and the effect of the French high court's decision to dismiss the litigation
 - Conflict between Cour de Cassation ruling and the 11th Circuit Court of Appeals
 - Update on future plaintiff filings in the Southern District of Florida
- Interplay between criminal prosecution and civil litigation in multiple countries resulting from a foreign crash
 - o Evidentiary issues
 - Admissibility of foreign accident reports and other foreign documents
 - Admissibility of NTSB in foreign reports
 - Foreign damages
- Non-traditional forums and the risk of certain jurisdictions becoming FNC black holes for defendants
 - o Variation among state courts in keeping cases in their jurisdiction or moving them to foreign jurisdictions
 - o Variations among state courts in handling cases with a tenuous, if any, relationship to the forum
 - o Developments in personal jurisdiction
- Federal Courts Jurisdiction and Venue Clarification Act
 - o Effects on removal and venue
- Choice of law issues
 - o Best practices for choice of law analysis and motions on liability and damages
 - o Challenging the plaintiff's choice of law
 - o Choice of law in the context of foreign accidents involving an FNC defense
 - o Federal Tort Claims Act

11:30 **Defending and Managing Claims Involving Passenger Rights and Privacy, TSA Security Checks and Passenger/Cargo Screening and Tarmac Delays**

Frederick Alimonti

Partner
Alimonti Law Offices, PC

Richard G. Grotch

Shareholder
Coddington, Hicks & Danforth

William L. Waudby

Shareholder
Baker, Donelson, Beaman, Caldwell & Berkowitz, PC

Nicholas E. Pantelopous

Member
Kaplan, Massamillo & Andrews, LLC

- What risks exist for airlines in the wake of more stringent security measures due to the ongoing threat of terrorism?
- How to defend against passenger discrimination claims, including profiling, discrimination and related civil rights claims
- Litigation stemming from allegations of unequal access for the disabled
- Handling passenger baggage delay and damage claims and ancillary litigation
- TSA litigation
 - o Health and privacy concerns over scanners
 - o Do airlines have a duty to passengers alleging improper actions occurring during the screening process?

- o When are security personnel liable?
- Privatization of security at airports
- When are intermediaries in cargo screening liable under the Montreal Convention?
- Federal/State cargo fee arrangements, and challenges posed
- DOT inquiries and extraterritorial issues posed by tarmac delays
- Do tarmac and gate delays give rise to private rights of action?
- Subrogation of claims by insurers, and its implications for manufacturers and carriers
 - o Subrogation in: property damage claims; personal injury

12:30 **Innovative Pre-Trial and Trial Strategies for Defending Against Aviation Claims: Managing E-Discovery, Using Expert Witnesses and Communicating with the Jury**

Elizabeth O'Neil

Partner
Hawkins Parnell Thackston & Young LLP

Christopher D. Brown

Partner
Wilson Elser Moskowitz Edelman & Dicker LLP

Shalem Massey

Partner
Bryan Cave LLP

Jonathan E. DeMay

Partner
Condon & Forsyth LLP

Moderator:

Jill M. Leibold

Director - Jury Research
Litigation Insights

E-discovery and Its Increasing Involvement in Aviation Litigation

- Recent developments in the use of e-discovery in aviation litigation
- Creating a defensive e-discovery strategy
- Using predictive coding to cut costs and manage document production
 - o Technology Assisted Review and Predictive Coding (PC-TAR), and the coding and prioritization of electronically stored information
- Pitfalls of e-discovery and recent rulings
 - o Recent social media discovery trends and decisions
 - o Privacy implications and how courts have responded

The Use of Experts

- Picking the right expert
- Admissibility of expert testimony under Rule 702
- Qualification before getting into the court room
- The impact of Rule 26 on expert discovery
- Minimizing cost for the client
- Preparing and defending Daubert challenges
- Cross examining an expert witness

Winning Over the Jury

- Effective uses of jury research
- Assessing trial themes
- Overcoming juror sympathies
- Psychology research and what it tells us

1:50 **End of Conference –
Lunch for Master Class B Participants**

A

Pre-Conference Business Development Master Class:
Tuesday, June 26, 2012
7:30 a.m. - 9:30 a.m.

In-House Perspectives on Selection and Evaluation of Outside Counsel

Mark J. Larson
Vice President & Chief Litigation Counsel
Honeywell Aerospace

Andrew C. Spacone
Of Counsel
Adler Pollock & Sheehan P.C.
Former Deputy General Counsel and Assistant Secretary at Textron, Inc.

- Best practices for communications and candor with clients
- Developing relationships while putting a focus on knowledge and quality
 - The things that clients really want to know before engaging outside counsel
 - Is the client choosing the partner or the firm? Underlying partner relationships and engagement of outside counsel
- Demystifying the firm selection process
 - Referral resources and decision-making
 - How important are firm rankings and surveys that rate firms?
 - Use of preferred provider lists
- Managing outside counsel through realistic and accurate budgets
 - Expectations relating to litigation budgets
- Pet peeves: “worst practices” that outside counsel should avoid committing
- In-house counsel views towards the handling of document production
 - Are some firms utilizing unique methods that resulted in lower costs
- Factoring how legal fees are being structured into law firm selection and evaluation
 - In-house views on trends and innovations in alternative fee arrangements
- How do the selection processes differ for high-stakes work?

B

Post-Conference Master Class:
Wednesday, June 27, 2012
2:45 p.m. - 4:45 p.m.

Working Within the Triangle: Expert Strategies on How Defense Counsel, Insurers and Companies Can Work Together to Successfully Resolve Claims and Litigation

Frederick Alimonti
Partner
Alimonti Law Offices, PC

Jeffrey J. Ellis
Partner
Quirk and Bakalor, P.C.

Elizabeth O'Neil
Partner
Hawkins Parnell Thackston & Young LLP

With so much at stake in aviation litigation and the sheer volume and monetary value of cases, it is critical for outside counsel, their manufacturer and carrier client, and the insurer to be able to work together to successfully and efficiently resolve claims. This session will provide participants proven strategies on communication methods between parties, achieving efficient and cost effective coordination of responsibilities, and determining when to settle and when to litigate. Topics include:

- Insurer involvement in the litigation
- Discrepancy between insurance policies that allow expedient settlement and companies wanting to send a message that they will fight claims
- Ensuring the client company remains involved in communications
- Recent commercial issues, including:
 - Delivery of materials
 - Ownership
 - Multiple claims in financing



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