EMERGENCY PREPAREDNESS AND RESPONSE
LeClairRyan is a national law firm with a strong litigation and regulatory compliance practice that includes representation of transportation companies following incidents, accidents, and events. We have successfully guided companies through the NTSB investigative process and other sensitive issues that affect not only the probable cause findings, but also areas that ultimately have bearing on civil and criminal liability and regulatory compliance. We have represented a multitude of transportation companies (e.g., airlines, pipelines, railroads, component manufacturers, etc.) in all manners of accidents. We understand what you will be going through in the aftermath of an accident, and can help you develop plans, practices and procedures to get through such a difficult period. Our in-depth knowledge and strong relationships throughout the industry allows us to provide a quality of representation that is unparalleled in the legal profession.

Our clients include companies whose core business involves aircraft operation, manufacturing, maintenance (airlines, charter airlines, cargo airlines, fractional aircraft operators and helicopter flight services), surface transport (road, rail and waterborne), pipelines (crude and refined petroleum, fuels and other fluids) and component part manufacturers. We also represent companies whose core business is not transportation, but who operate aircraft, such as corporate jets.

Our Emergency Preparedness and Response team has 40 years' experience preparing transportation operators to respond to emergencies and helping them through sudden and significant events when they occur. Led by a former Director of the Torts Branch – Aviation & Admiralty Section of the Civil Division of the U.S. Justice Department, our team assists clients in formulating a customized emergency response plan to be prepared for an accident or incident anywhere in the world. In the event of a catastrophe or emergency, we are available to advise our clients – in real time, in their headquarters or at the emergency scene, on a host of critical issues that fall outside that scope of that embargo.
Tested and Ready
LeClairRyan has counseled and guided numerous airlines and aviation and other companies through National Transportation Safety Board (NTSB) accident/incident investigations and Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Coast Guard, Department of Homeland Security Transportation Security Administration and other investigations.

Significant representations include:

- Arrow Air Flight 1285 crash in Gander, Newfoundland
- U.S. Airways crashes in New York (Flights 405 and 1549 aka “the Miracle on the Hudson”), in Charlotte, NC (Flights 1016 and 5481) and in Pittsburgh (Flight 427)
- Alaska Airlines Flight 261 crash in water near Los Angeles
- Colgan Air Flight 9446 crash in water near Hyannis, MA
- Learjet crash in South Dakota (PGA champion Payne Stewart perished in incident)
- Martinair (for Circuit City Stores Inc.) landing approach crash in Pueblo [CO] Memorial Airport
- The Galloping Ghost (modified military plane) crash during airshow in Reno, NV
- National Airlines Cargo Flight 102 crash in Bagram, Afghanistan
- Virgin Galactic SpaceShipTwo crash in Mojave Desert, CA

Other accident/incident investigations we’ve handled include:

- Air Century Flight CEY521 crash in Dominican Republic
- Air India Express Flight 812 runway overshoot crash in Mangalore, India
- Air Serv International crash in Democratic Republic of Congo
- American Airlines Flight 191 crash in Chicago
- American Eagle Flight 4184 crash in Roselawn, IN
- British Airways Flight 149 landed then stranded in Kuwait during Iraqi invasion
- Colgan Air Flight 3407 landing approach crash in Buffalo, NY
- Continental Airlines Flight 128 severe turbulence requiring forced landing in Miami
- Flying Tiger Line Flight 66 crash into hillside in Kuala Lumpur, Malaysia
- Japan Air Lines Flight 123 crash into mountain in Ueno, Gunma Prefecture
- Korean Airlines Flight 007 shootdown by Soviet military
- Korean Air Cargo Flight 6316 crash after takeoff in Shanghai, China
- Northwest Airlines Flight 1482 runway collision in dense fog in Detroit
- Southwest Airlines Flight 1248 runway overrun during snowstorm in Chicago
- Swissair Flight 111 crash in water near Novia Scotia, Canada
- Tam Airlines Flight 402 crash in Sal Paolo, Brazil
- Tropic Air Flight 9N2300 emergency landing offshore near Belize
- TWA Flight 800 crash in water near East Moriches, NY
- United Airlines Flight 232 crash landing in Sioux City, IA
NTSB Investigation in a Nutshell

The NTSB is responsible for investigating every civil aircraft accident and recommending safety standards to prevent future accidents. Its investigatory efforts begin with the arrival at the accident site of a “Go Team” made up of an Investigator In Charge (IIC) along with a panel of technical specialists assembled to address the primary issues arising out of the particular crash. Committees called “Groups” handle specialized components of the investigation (e.g., operations, control systems, mechanical, human performance, survival factors, event recorders, crashworthiness, hazardous materials, fire/explosion, metallurgical, etc.). Parties designated by the NTSB to have official status as “Investigation Consultants” usually include, at a minimum, the transportation operator and the FAA and other federal and state regulatory inspectors, and may also include first responders, labor organizations, and the aircraft manufacturer and part manufacturers. The accident scene investigation is followed by several months of fact-gathering, including witness interviews and sometimes public hearings, and analysis; the issuance of “factual reports” by each investigatory group; and then submission of a draft final report, including a proposed probable cause finding and safety recommendations, for consideration by NTSB’s five board members.

We ensure that our clients are fully informed as to how the Board conducts its investigations, what powers NTSB investigators have, and what rights the company’s executives and employees have in an interrogation situation. We prepare and represent witnesses during NTSB interviews.

We advise our clients that full cooperation is consistent with their own broader concerns, from protecting their customers and employees, to safeguarding their brand equity in the eyes of consumers and the financial markets. Accordingly, we recommend designation of a point person who has received accident response training, commands the C-suite’s respect and is fully committed to ensuring that all requests by the NTSB, the Federal Bureau of Investigation and any other investigators are promptly and fully addressed.

That said, we also recognize that a certain tension exists between the desire to cooperate and the wish to protect one’s interests. Our extensive experience dealing with the legal risks associated with U.S. domestic and foreign incidents/accidents, which range from administrative punishments and orders under U.S. regulations and treaty requirements to personal injury and products liability claims brought by the victims or their families, gives our clients confidence in our ability to protect their interests.

We advise on the NTSB accident investigation process, including statutory authority and relevant sections, and particularly the respective roles of the board and the various “parties to the investigation.” We also advise on document collection and production issues, from retention and preservation of electronically stored information to attorney-client and work-product privileges.
Emergency Preparedness (continued)

In addition, we advise on all other applicable regulations, laws and treaties, including:

- For accidents occurring in the United States: drug and alcohol testing regulations; law enforcement and criminal concerns, particularly where accident resulted in deaths; HIPAA privacy rule exception for public health authorities in a mass casualties situation; OSHA regulations relevant to accident site; The Aviation Disaster Family Assistance Act; U.S. Postal Service and Department of Defense notification requirements; the Death on the High Seas Act; and, if hazardous cargo, Centers for Disease Control, Center for Disease Control, U.S. Energy Research and Development Administration, etc.

- For accidents outside the United States: International Civil Aviation Organization (ICAO) Annex 13 ground rules for investigations involving more than one country; the Warsaw Convention of 1929, the Hague Protocol and the Montreal Convention, as applicable; U.S. Department of State Foreign Affairs Manual (Vol. 7 - Consular Affairs); local laws of the territory of the crash, including regarding evidence handling and protection.

We advise on media relations, notifying victims’ families, providing support and assistance to the families and friends of passengers and crewmembers, employee work-related death issues, the MOU between the Air Transport Association (ATA) and NTSB regarding expenditures related to the recovery and identification of aviation accident victims, FAA actions to suspend or revoke operating certificates, and countless other issues.

Developing an Emergency Response Plan (ERP)

LeClairRyan assists clients in developing an emergency response plan (ERP). Required by federal and state regulators, its purpose is to serve as a blueprint for actions to be instituted by management and employees in the event of an emergency. Such a plan might include: a list of events that would activate its use; the designation of a single point of contact to initiate or relay an alert with immediate access to emergency checklists and up-to-date lists of managers and emergency services to be contacted; actions employees should and should not take; fielding an emergency call, including key information points to pursue; list of emergency numbers (internal and external); accident information sheet (e.g., location, circumstances, consequences for crew, passengers and third-parties, damage to property, etc.); setting up and activation of crisis management center and the roles of its members; crisis log sheet; internal and external communication plan, including draft press releases (initial and update); to name just a few of the elements.
Training
Federal and state regulators require emergency response training, initially and periodically thereafter. We have assisted the following clients in structuring and effective tabletop exercises, drills, and functional and full-scale exercises:

AAR Corp
AIG Aviation
Air Century
Air Serv International
Air Serv Corp
Alaska Airlines
American Airlines
American Empire
Ametek
Atom Airways
Aviation Technical Services
B/E Aerospace
Blue Hawaiian Helicopters
Colgan Air
Corporate Air
Delta Air Lines
EL AL Israel Airlines
Empire Airlines
Evergreen Helicopters
Global Aerospace
Hahn Air Lines GmbH
Jetstream Aviation
Mckee Foods
Mesa Airlines
Miami Air
Mid East Jet
Mountain Air Cargo
National Air Cargo
Phoenix Air Group
Pinnacle Airways
Piper Aircraft
Polaris Aviation
Presidential Airways
PSA Airlines
Republic Airways
Sierra Nevada Corp.
SkyWest Airlines
Southwest Airlines
Spirit Airlines
StandardAero
Sun Country Airlines
Swissport
Tropic Air
United Airlines
UPS Airlines
Virgin Galactic Ventures
World Airways
U.S. Airways

Staying Current
Ten years ago, noticing that airlines were unprepared for accidents and other emergencies, we began organizing symposia on what happens in their immediate aftermath—from practical issues like the impact on flight schedules to investigations that could lead to criminal charges—and on how to deal with it all and how we can be part of the response.

Recent topics include:

• Using limited personnel resources to the maximum
• Keeping your company running during an incident/accident response
• Making social media part of your rumor-management strategy
• The unique issues faced by regional, cargo and corporate operators
• The ever-changing face of the FAA
• Family assistance specialists and other independent contractors that can enhance the effectiveness of your emergency response
• Taking full advantage of the resources offered by your insurance carrier/broker
Emergency Response

Emergency response involves much more than full cooperation with the NTSB investigation. Like multiple trains leaving the station at once, it can include probes by other, relevant agencies such as an investigation by the FAA into the qualifications of the pilot and maintenance professionals after a plane crash. A parallel criminal investigation might be underway. Then there’s the 24-hour news cycle, sped up significantly by the Internet, to deal with. What do you tell employees, victims’ families, shareholders, the financial markets? Unless you’ve been involved in an accident, much less a catastrophic one, it’s impossible to know how all the pieces fit together. Because of our extensive experience coordinating the movement of trains on multiple tracks that converge, merge and cross, we’ve been able to keep our clients’ emergency response efforts from derailing.

When an accident or incident occurs, we’re among the first responders. We take an active role in assisting clients in the implementation of the ERP, including:

- Ensuring that all key personnel have been notified.
- Participating, along with inside counsel, in initial team briefings.
- Being available as legal questions arise and employee interviews are requested.
- Reviewing press releases and other statements to the press.
- Going to the accident site to provide advice on legal issues as they arise regarding the investigation.
- Erecting a “Chinese wall” to begin addressing potential or actual civil and/or criminal liability.
- Providing legal advice and representation to employees in connection with investigative interviews by the NTSB, including ensuring they fully comprehend the legal nature and potential ramifications of their statement, public nature of the transcripts, importance of testimony accuracy, Fifth Amendment privileges against self-incrimination, etc.
- Assisting in the selection and briefing of personnel to NTSB working groups, including:
  1. Selecting only those capable of recognizing and intervening when the client’s interests are being compromised in the course of the investigation, as working group members are likely to be key witnesses in civil litigation and possibly criminal investigations.
  2. Briefing them on their role as “party to the investigation” and warning them that other parties have interests different from and possibly adverse to those of their employer, and that they need to be ready to intervene if such parties are driving the investigation in a direction inimical to the airline’s interests.
  3. Reminding them that everything developed in an NTSB investigation could be used in a criminal prosecution of airline and its employees, and underscoring the importance of following the above instructions and remaining in close communication with counsel.
Aviation Accident Checklist

In general, the following priority of actions should be followed: (i) protect people; (ii) protect property; (iii) protect evidence; (iv) notify and investigate; and (v) accomplish recovery.

1. Initiate emergency plan
2. Notify NTSB
3. Coordinate with your response team
4. Notify Federal Aviation Administration
5. Notify Department of Defense (if military or government personnel were aboard the aircraft)
6. Notify Department of State (for civilian U.S. government personnel casualties in international flight)
7. Notify U.S. Postal Service (if aircraft carrying U.S. mail)
8. For foreign accidents, notify Department of State and Civil Aeronautics Administration
9. Notify insurance broker and underwriters (required by most policies)
10. Notify Corporate Security (to keep press at bay and secure “situation room,” accident site and on-site facilities)
11. Notify Environmental Programs Department (to evaluate possible fuel spill or hazardous cargo situation) and possibly also EPA, and state and local environmental agencies
12. Notify outside counsel (as legal questions arise of employee interviews are requested)
13. Coordinate with Public Relations and Corporate Communications Departments
14. Dispatch legal representative to scene
15. Provide legal representation to interviewees (important given potential for criminal prosecution, as well as civil liability)
16. Preserve aircraft wreckage, cargo and data recorders
17. Identify and secure key documents, including: aircraft maintenance records, operational and maintenance manuals, flight records, passenger records, training records, personnel records, passenger and crew list, company emails and documents related to code share agreement-related documents
18. Drug and alcohol tests for personnel serving a “safety-sensitive function”
19. Assist in selection of airline participants in NTSB investigation
20. Brief all personnel involved in the investigation on legal ground rules regarding: discussing the accident, release of documents, signing things, nature of the NTSB process and potential for criminal investigation.
Emergency Response Website, Handbook

The period after an accident is so overwhelming, and so hostile to learning, that only by planning ahead can you hope to avoid becoming a casualty of the accident response process. That's why we created an Aviation Emergency Response website and manual that contain the basic advice and resource materials that we have found to be helpful in the aftermath of a transportation accident. While these tools cannot replace the advice and assistance of legal and technical experts on the scene, we believe they will help a company faced with a major accident to avoid the common missteps that can derail an otherwise valid accident response plan. These materials can also provide a solid basis for creating your company’s emergency response plan.

The materials, which provide guidance on addressing the issues of immediate concern to the NTSB and FAA while remaining mindful of the potential for civil litigation and/or criminal prosecution, were not developed just for major airlines and air cargo companies, but also corporate flight departments and others whose core business is not the operation of aircraft; so we’ve structured our advice with an eye toward doing “more with less.” These tools are the product of our aviation team’s more than four decades assisting clients with emergencies and interacting with officials and staff at the NTSB, the FAA, the Transportation Security Administration (TSA), the U.S. Departments of State, Justice and Treasury; and private insurers and brokers. We update the site and manual as needed to ensure that the best information and guidance is available.
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