



# AIR CRASH CONSULTANTS

*published by*

**AIR CRASH CONSULTANTS**  
**<http://aircrashconsultants.com>**  
**[george@aircrashconsultants.com](mailto:george@aircrashconsultants.com)**

*a division of*

**WRONGFUL DEATH CONSULTANTS**  
**A CALIFORNIA CORPORATION**  
**U.S. (877) 348-0030**  
**U.S. (818) 348-0300**

## About George Hatcher



In four decades as advisor/consultant/strategist for some of the most important law firms in the U.S, George Hatcher has handled every type of case you can imagine. He pulled together his team to form Air Crash Consultants.

In the field of global litigation support, Air Crash Consultants' mission is to bridge the gap between United States attorneys George consults for and local lawyers who represent the families. ACC is a global consulting firm headquartered in Los Angeles with affiliations across the Americas, Europe, Asia, Africa, and Australia, providing litigation support, accident investigation, translation services, and as-needed assistance, and where the victims' interests are always paramount. No client is ever obligated to retain a lawyer George consults for; and no victim's family ever pays George or Air Crash Consultants for their services. The well-being of families surviving aviation tragedies is often overlooked by those who should be the most concerned—the airlines. ACC aims for tangible positive impact.

Justice for the airline can not be separated from the rights of the families.



George maintains **Anonymous Experts**, a database of active and retired pilots who are qualified on innumerable types of aircraft. These pilots provide crucial input and professional opinions in their specialities. George conferences with these experts, essentially a private think tank of active pilots experienced on the particular type of plane involved. Professionals who know the type of plane, the operator, and all its operations backwards and forwards can recognize any anomaly in mechanics, operations and procedures, and they apply their expertise to George's research.

**Anonymous Experts** pilots answer model-specific questions that come up in television interviews, family meetings, client interviews or when conferring with lawyers. These **Anonymous Experts** do not appear in court. They have signed an agreement of anonymity so they will not disclose their identity, nor shall AE disclose theirs, an important factor when/if they are still employed by the airline operators we are studying; they can apply their expertise without fear of reprisal. Their only purpose is to provide expert opinions of what occurred, independent of the gossip, buzz and bias of media coverage.



## **Air Crash Consultants**

George Hatcher's Air Crash Consultants team has the ability and experience to get things done. ACC is not a government agency and George is not a lawyer, and does not consider himself an expert, but he quotes experts (like his association of over 250 pilots); and he's spent most of his working life with lawyers as an independent service provider.


Most attorneys conduct their own investigations. Attorney investigations usually involve research using experts qualified to appear in court; and these investigations usually begin after the country issues their interim or final report. The Air Crash Consultants investigator does not wait, but promptly compiles all available data and confers with pilots most qualified to analyze the technical aspects of a case, key to identifying responsible parties. His pilot-experts try to pinpoint the suspects early-on, raising issues such as possible radar failure in the Ethiopia case, or an unpublicized weather cell, directly above the incident location.

Legally, an aviation case is often both a wrongful death and product liability case, a pursuit of the responsible parties and products (manufactured or designed badly or failing) which contributed to the crash. Here is how a case may begin:

Less than 48 hours after the disappearance of the Air France Flight 447 Airbus A330, attorneys of a firm who worked with ACC in the 2007 Tam case called George about a client of theirs on board. Before departing for Rio de Janeiro, Hatcher requested a scenario summarizing what may have occurred from two highly qualified Airbus 330 pilots from his Anonymous Experts database.

Based on input like ACARS  data (or what was available at the time,) meteorological conditions and the limited established facts, the scenarios the pilots developed were not for courtroom use, but to educate George free of media hype that always develops concerning such controversial cases. George needed to know what he could tell families and their attorneys when they asked about what may have happened. The only data at that point was ACARS , and meteorological records—no black boxes—but George arrived armed with knowledgeable feedback from highly experienced Airbus Captains. Educated guesswork, to be sure, but both pilots reported independently, turning a nearly indecipherable technical data stream into scenarios that closely resemble reconstructions of the sequence of events that officials came up with months later. Bear in mind that this was long before the wreckage was found.

In the Air Crash Consultants network, George's expertise is complemented by a consortium of top firms and experts, each with a long and successful history in aviation litigation.

 Aircraft Communications Addressing and Reporting System (ACARS) is a digital message transmission system between aircraft and ground stations. ACARS data is text partitioned in under 200 character segments and can be cryptic and encoded.



## Dealing With the Aftermath

Because I have some idea what you are going through, still wrapped in grief, and dropped into the unfamiliar culture of aviation litigation, I would like to share some basic information about aviation accidents based on my experience. There's a reason I call it a culture of aviation litigation. There's a whole glossary of terms that are commonly used, and I wanted to cover a few of the most crucial ones. This is what I would want to know if I were in your shoes. First, here is an introduction to a few terms you might not be familiar with.

🌐 A Domestic flight stays within the country of departure and arrival. For example, a flight from Paris, France to Marseilles, France is a domestic flight.

🌐 An International flight is outside the country of departure. It starts in one country and ends up in another. For example, a flight from New York to Paris, France is an International Flight.

🌐 The Warsaw Convention is an international treaty which regulates liability for International carriage of persons, luggage or goods. It was signed in 1929 in Warsaw, and amended in 1955 at The Hague. It may be referred to as the Warsaw Treaty.

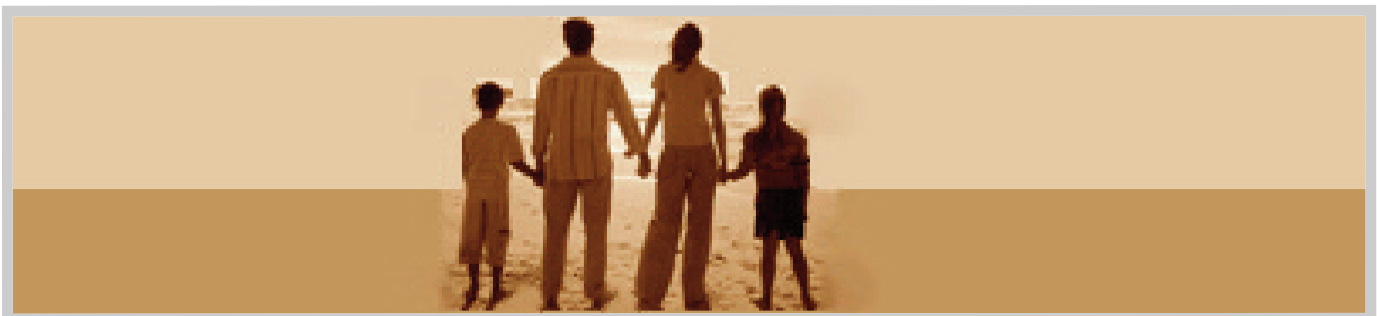
🌐 The Montreal Convention, formerly the Convention for the Unification of Certain rules for International Carriage by Air, is an updated treaty regulating liability for the rules of International carriage adopted by ICAO member states in 1999. It introduces a two tier liability system. The first tier provides compensation (if qualified) up to 100,000 Special Drawing Rights; the second tier deals with claims over the limit. The Montreal Convention may be referred to as the Montreal Treaty.

🌐 The ICAO, The International Civil Aviation Organization is a United Nations agency promoting safe international air transport. Among other things, the ICAO establishes the protocol for aviation accident investigation for all signatories\*. (\*Signatories are those countries who signed the treaties. )

🌐 The IATA, the International Air Transport Association is an international trade group developed to represent and serve the airline industry, whose stated mission is "to provide safe and secure transportation to its passengers." Among other things, they perform Operational Safety Audits mandatory to all members.

🌐 A Domestic Flight is not covered by a treaty such as the Warsaw or Montreal Treaty/Convention. The laws of the country will dictate the limits of compensation to be paid by the airline operator. If no such laws exist, then it becomes a matter of negotiation between the attorneys representing the insurance carriers and the family representative or attorney. Thus, for flights that occur entirely within a country, like Sol Líneas Aéreas flight 5428, a domestic flight entirely in Argentina, international treaties do not apply.

🌐 SDR Special Drawing Rights are a floating value which follows world market exchange rates. 100,000 SDR currently equals about 160,00 US.



## Some Relevant History



Each country has its own laws, but when commercial aviation came into being, countries decided to cooperate and develop a set of guidelines assigning rights and rules. The first Convention was in Warsaw in 1929, and that treaty outlined a number of rights and rules regarding tickets, baggage, and how much a carrier owes passengers if injury occurs. That treaty is known as the Warsaw treaty. As time passed, the limitations of the treaty became clear. It was amended a number of times over the years to keep it relevant. In 1955, changes were made producing a document known as “The Hague Protocol.” More recently, in 1999, the Montreal Convention was signed. Perhaps the most unusual reality is that not all countries have signed the most recent treaties. When a crash occurs, the carrier is governed by the current treaty signed by the carrier’s country. In all the adaptations over the years in these treaties, the one thing that has not changed is that the treaty’s intent is to protect the carriers from being sued for unlimited amount of money. I know of no treaty that was written to protect the passenger. Functionally, the treaties simply set a maximum compensation the airline operator will have to pay, in other words, a cap. For assurance independent of that cap, purchase separate life insurance when you fly. In the event of disaster, except for minor exceptions, your beneficiary will get paid.

## Shared International Protocols

🌐 An International flight is normally covered by the Warsaw or Montreal Treaties. Which treaty applies will depend on whether or not the departing country and arriving country ratified the treaty. If the departing company signed on to Montreal and the arriving country also signed, then the Montreal Treaty applies as to compensation of airline liability of the passenger and baggage. Currently, the Montreal Treaty almost always applies to International flights. There are countries in Africa and the Middle East who have only signed the older treaties, or no treaty at all, but most countries have ratified.

## The Tier System

🌐 Tiers: The Montreal system is a two tiered system. Tiers refer to compensation. The first tier provides “automatic” compensation for claims up to 100,000 Special Drawing Rights. The airline has no defense to claims up to this amount. This does not mean you will automatically get the full 100,000 SDR. The family must prove that the decedent would earn 100,000 in their lifetime, and/or show whatever damages can be proved to be paid that much. If a lesser amount is all that can be proved, that is all that will be offered. Don’t forget that the airline will be offering as little as possible. The 100,000 SDRs is the maximum that the airline operator will be strictly liable for paying (provable damages not to exceed 100,000 SDRs.) To obtain this amount, you will have to submit documents proving that the decedent would earn that much money during the remainder of his lifetime and/or other proven damages on which monetary value can be placed. A good lawyer will push to maximize the value of your loved one, and work with you to gather the essential evidence, including proof of income.

## Damages

The treaties require compensation on provable damages. There is also a term for intangible damage called “pain and suffering,” otherwise known as non-pecuniary damages. It is difficult to put a dollar amount on pain and suffering, and just as difficult to prove it. However, it’s done all the time by attorneys who work aviation cases. While love is priceless, and the intrinsic value of those we love has nothing to do with earning power, insurance companies arm themselves with cold facts: children don’t work; full time students don’t work; a housewife that does not work has no income to prove; the elderly may be retired, so they don’t work and no one may be depending on them. A good lawyer will not stop at a profile that only showcases the lack of a paycheck, and will counter with as many tangible provable factors as possible, and use them to illustrate a full, holistic picture. A good lawyer will push for compensation for non-pecuniary damages: the pain and suffering of you and your family, and also the pain and suffering we can only imagine occurred up to the moment of your loved one’s demise. In a perfect world, if you submit everything about the decedent perfectly, you could get paid everything you have coming except for a large non-pecuniary damage award.

In the U.S. against a culpable party, *if you win*, you can receive the difference between what the operator should have paid you, and the top number, i.e. if the jury awards you five million, and you already received four from the operator, *it is possible* that you will be only be able to collect the difference between the jury’s number of five million, and the four you already received. But ultimately, you need an expert to have any chance at all.

🌐 Note: If you meet with the insurance company before you meet a lawyer, don’t sign away your rights.

🌐 Don’t provide proof of income. Talk with a lawyer first.

## **Montreal Treaty in Action**

### **Protecting the Carrier**

The insurer or airline's attorney will not explain the second tier of the Montreal Treaty. Under Article 21(2), an airline can avoid liability for damages exceeding 100,000 SDRs only if it can prove that such damages were not due to its "negligence or other wrongful act or omission," or such damages were "solely due to the negligence or other wrongful act or omission of a third party. Believe me, given enough time to pass following the tragedy, the airline will never prove this, so the cap of 100,000 SDRs will not hold. Don't let apparent conflict confuse you.

There are infinite ways for the airline's negligence to show up, and the airline must disprove all of them. The burden of proof is practically impossible for the airline to meet. It has been my experience that the operator will not even try to prove this and will eventually go along with compensation in excess of the 100,000 SDRs, providing there is tangible proof that the decedent had a greater amount in damages. It just takes an experienced lawyer, armed with incontrovertible evidence of the damages being claimed, to tough it out, and deal with the attorneys for the insurance carriers.

Not everyone will agree that the airline operator is being protected here, rather than the passenger, but in my opinion, it is true. You can read the articles 20 and 21 yourself, here:

#### **Article 20**

**In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.**

#### **Article 21**

**1. In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.**

**2. In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the carrier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.**



## Justice Moves Slowly

I realize that for some families, waiting is a financial hardship. For those who can't wait, the insurance company will move in to take advantage of the situation; I can only hope you are not pushed or rushed. In my experience, rushing to settle minimizes your benefits. If there's any way you can manage to wait, have your attorney take the time to gather all the documentation, review that documentation, painstakingly go over the concrete evidence of financial loss, and when he is satisfied, submit and then negotiate. Ideally the matter gets resolved against the operator without having to file a lawsuit.



The passenger who occupies a seat on a plane, who paid a fare to be on that plane is fault free. In the event of death or injury, compensation must be paid by the airline operator. Determining how much that compensation will be is no easy feat, but insurance companies have devised a formula for this. Insurance is a business, and they will do their best to pay as little as they can. These insurance company attorneys are people just like you and me. They have families. They go to bed at night and wake up in the morning and put on their shoes just like we do. But when at work, they have a job to do and that job is to settle with the families of victims for as little money as possible. And there will be substantial negotiation. The attorneys representing insurance carriers are some of the best attorneys you will ever see.

Every occupied seat in a plane holds a unique human being. Each settlement is unique because it is based on the unique profile of the decedent. If you hear families are all being paid a fixed amount, something is wrong. According to the treaties, the award cannot be a fixed amount. The final negotiated settlement is reached based, in part, on individualized evaluations of the economic loss of the decedent. That uniqueness includes factors that affect this evaluation, including the occupation, earnings, and potential earnings based on the deceased's age and calculated life expectancy. The lawyer will compile this information in your favor. The insurance company will not.





The first thing a lawyer does is put the insurance carrier and their attorneys on notice of representation, so **if you have a lawyer representing you, you will never have to meet with the insurance company.** If the airline's insurance adjuster did knock on your door, he would be eager to close the case as inexpensively as possible; he may not feel like an opponent, but you should always remember, the insurance representative is paid by the guys on the opposite side of the table from you. If you don't have a lawyer, than at least talk to one before you meet with the insurance company. A lawyer will caution you not to turn over financial documents to that person nor provide details about earnings of the decedent. The minute you inform the insurance company about your loved ones financial details, you give your opponent an advantage; plus, if later you hire a lawyer, your lawyer will encounter difficulty negotiating because the insurance lawyer will have pre-determined the earnings of the decedent, using lowball numbers (underestimates).

## Navigating the Legal Path to Compensation and Justice



Do not expect the airline operator to render you much assistance, regardless of what country you're in. If the tragic flight was international, the airline is obligated to provide the immediate heir of the decedent approximately \$25,000 dollars within 15 days after determining the identities of those entitled to compensation.

This amount will eventually be deducted from any final compensation you reach with the operator.

In a domestic flight the family would probably not receive any immediate compensation from the airline operator. In the Sol Lineas case, a domestic case, I haven't heard about any interim compensation being distributed. I have heard about one or two quick settlements that I can only imagine were small compensation, at best. If I had had the opportunity to talk to those families, I'd have recommended that they not sign away their rights to the insurance company, nor provide proof of income to the insurance company, at least not until they had a chance to talk with a trusted lawyer first. If you settle as quickly as the airline operator attorney would like you to do, you will no doubt receive a fraction of what you should have received. They will require you to sign a global release upon receipt of the settlement money, which means that there are options which are eliminated for you and the family. If you sign a global release, and it turns out later down the line that there is another culpable party or parties, you will be able to receive nothing from them, but the operator will without a doubt sue that party to recover some or all of the compensation paid to the families.

As you see already from our short glossary, the rules of compensation are not simple. In my opinion, the family must fight fire with fire, and do what the airline insurance carriers do: retain a lawyer.



## Choosing Your Lawyer

The lawyer does not have to be American or located in the United States. The lawyer you retain, can be located in any country, and of any nationality. What matters is that he can demonstrate to you that he has successfully handled aviation matters in the past, and is an expert in that area. He should be able to prove this to you at a glance. Most of the lawyers I consult with list some of their landmark aviation cases on their web pages, though sometimes the amounts of settlements are deemed confidential. For an example of this, take a look at brochure of aviation cases you received with this booklet. The pages are filled with cases I have personally worked and/or that the attorneys I consult for are presently working on and/or have concluded. These are US firms with whom I consult, who are proven experts in aviation, and have been in the practice of law for more than 40 years. *I will still be there for you even if you don't retain the lawyers I consult for, and you never have to pay me for my services.* If you retain the services of a lawyer who practices in the United States, your fee is a percentage of what that lawyer collects for you. If he doesn't collect, you pay nothing. This is referred to as a contingency fee. 🌐 A method of payment of legal fees represented by a percentage of an award. They don't get paid unless you do.



I always recommend that a family be represented by a lawyer in the country of residence, someone the family knows and trusts. If that lawyer is not an expert in aviation, ask him to contact me. Most cases I work begin with a local lawyer (like your own lawyer) contacting us and requesting assistance. In the 2007 Congonhas-São Paulo Tam tragedy, each of the 150 families who retained attorneys I consult for also had a local lawyer. Customarily, your local lawyer's fees are paid by the attorneys you retain, from their contingency fees. Nothing comes out of your pocket; the attorney receiving the percentage should pay the local attorney for his/her participation in working the case with the U.S. Attorneys.

In addition to what the airline must pay, compensation may be awarded by other businesses which can be held responsible: the manufacturer of the plane or of flawed components on the plane such as the brakes, engine parts, computers or guidance equipment. Businesses which build planes, parts, provide service, maintain planes, lease or operate planes are legally required to operate to specified safety standards. These businesses carry billions of dollars in aviation insurance from insurance carriers such as Lloyds of London, Global Aerospace or AIG, to name a few. If anyone tells you that millions await your family for your loss, show that person the door or get out of that meeting room, fast. To determine the compensation amount is not easy, and it does not happen quickly. To promise exaggerated numbers is misleading.

🌐 The global release means that you are accepting the compensation agreed upon and releasing the airline operator AND releasing any future culpable parties that may be found to be responsible for the tragedy.

## Course of Action









Each opponent in the legal contest knows certain steps which must be performed, but depending on the partner, the circumstances, each step depends on what the opposition is doing. The family of a victim can expect certain steps following an aviation tragedy, but they may differ depending on the circumstance. The initial step is to put in a claim for any life insurance that the decedent may have had. Most companies, everywhere, will pay you immediately on presentation of a death certificate and proof of your identify as the named beneficiary. Collection of benefits can be slowed if there are delays in obtaining a death certificate, or rare instances where there is reason to believe the crash may have been caused by terrorism. The reason for this is that most life insurance policies carry an exclusion of coverage for a loss by terrorism. So when someone suspects terrorism, as they suspected in the Ethiopia crash, the passengers' life insurance companies refuse to pay until a government report is released that rules out a terrorist act.

I cannot stress how crucial is your attorney's expert presentation of your loved one's profile. It will take into account promotions, raises, cost of living increases, and any factors your lawyer will painstakingly uncover and present in the best possible light. Your attorney will make certain that all documents you send him about the earnings of the decedent are complete. If incomplete, the attorney will assist in preparing what is needed; if necessary, the attorney will retain the services of an accountant. The attorney will also request pictures, videos, anything you have to put together a book about the life of the decedent and his family. The book is a collage that illustrates how close he was to his immediate family, his spouse, children, parents, brothers, and sisters. This crucial tool paints a portrait of your loved ones uniqueness, but it all requires documentation. If all of the income the decedent was earning is not properly documented in tax returns, your attorney will help you obtain documentation. (Across the globe this happens frequently in cases I handle.) Documentation proving the real earnings of the decedent is crucial because the earning power of the decedent will have a great deal to do with the amount of compensation.

When the operator makes an offer of compensation, that offer will be presented to you for approval or rejection. The choice is yours. If you are dealing with a lawyer that I consult for in the United States, that lawyer cannot settle your case with the operator or anyone else without your permission. The retainer you sign with the law firm is an authorization to represent you, not a power of attorney. Whether it is a lawyer I consult for or not, this is the standard practice by attorneys in the United States.

If your lawyer protected you from signing a precipitous extended (global) release, then in addition to compensation from the operator, another step of litigation involves a long list of potentially responsible parties can be legally compelled to provide compensation if the investigation deems them to be responsible factors in the incident. In addition to the plane manufacturer and components manufacturer already mentioned, this list includes

-  The bank that financed or leased/rented the plane to the airline operator
-  The airport
-  Air traffic control
-  The maintenance or handling crew
-  The company who fueled the plane prior to the crash
-  The towers and tracking stations along the plane's route

The list can go on because it is based on the real things that happened, and the unique chain of events in the case. The list of responsible parties is based on what actually failed. The investigation that will immediately begin following a tragedy is normally conducted by a government agency of the country where the accident occurred. These investigations can take many months even though the government agency conducting the investigation will sometimes promise quick results. My experience has shown that even preliminary reports that were promised 60 days following the tragedy do not get released even after a year. Hence this will take time. Even after a preliminary investigation is released or a final investigation is released, the attorneys handling your case may not agree with the findings. Often they counter with experts of their own, and the results of their own investigation. The lawyers I consult for hire experts to carefully examine the evidence to determine what companies are at fault, and where all legitimate claims can be made.

Any lawyer you choose to hire should be able do the same.



## Arena for Damages



If there is evidence that there was a failure with design of the aircraft and/or a component that failed, causing or contributing to the tragedy another option comes in to play. If for example the manufacturer of the plane was a U.S. company, the attorneys would probably file a case in U.S. court. The same would be true if a component such as the altimeter, computer, etc. were also U.S. manufactured.

You may be wondering what damages families can recover. Medical expenses for survivors? Lost income? Loss of care, comfort and support? Grief? In the US, all of these damages are possible. This attitude in U.S. law tends to provide the most favorable outcome for a family. However the Montréal convention cedes entirely to local law regarding the measures of damages. Some countries restrict or even forbid compensation in wrongful death cases. If there is a US component that failed, or US passengers, a US based plane owner or manager, the US lawyers who consult with me can bring a case to be tried in the US, but this is just one possible benefit they can offer to a local lawyer. The powerhouse benefit of hiring a US lawyer is their long experience and reputation in aviation litigation. In the Air France case, we filed in Brazil, France, and even in Istanbul Turkey, showcasing how this kind of experience performs in any court, in any country in the world.

## Disclaimer

The information contained here is for general guidance on matters of interest. The application and impact of laws and treaties can vary widely based on the specific facts, locations and personalities involved. Given the inherent hazards of time and information, there may be delays, omissions or inaccuracies in information. We present this with the understanding that the authors and publishers are not herein engaged in rendering legal advice and services. This brochure is not to be a substitute for consultation with qualified professionals who are aware of your specific circumstances. This booklet is not professionally binding advice of any nature, and creates no advisor relationship between you and Air Crash Consultants, George Hatcher or any of the lawyers he consults for. It is your responsibility to make your own investigations, decisions and inquiries about the information, and find actual representation with a local lawyer or one of the law firms with whom we confer. Of course, we always recommend the excellent lawyers with whom we have had a consultation relationship, or by all means your own trusted attorney.







# AIR CRASH CONSULTANTS

*published by*

**AIR CRASH CONSULTANTS**  
**<http://aircrashconsultants.com>**  
**[george@aircrashconsultants.com](mailto:george@aircrashconsultants.com)**

*a division of*

**WRONGFUL DEATH CONSULTANTS**  
**A CALIFORNIA CORPORATION**  
**U.S. (877) 348-0030**  
**U.S. (818) 348-0300**