



# Aviation Litigation National Institute 2015

June 4, 2015  
The University Club of New York  
One West 54th Street  
New York, NY 10019

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# Aviation Litigation National Institute

June 4, 2015

The University Club of New York | New York, NY

## Program Description

During this one day program, our distinguished faculty will highlight current developments in aviation law and insurance topics including:

- Safety in the cockpit issues and precedents that developed from the 9/11 litigation and how they relate to the Germanwings tragedy
- The unique challenges involved in emergency medical helicopter services both from a legal and safety perspective
- Choice of forum and other legal issues and precedents arising from several high profile international disasters
- London market claims leaders' perspectives on handling aviation disasters spanning the globe
- Flying special missions for government and industry from explosives to ebola
- New developments in the law of aircraft financier liability in connection with the tortious actions of lessees and operators
- Common themes and issues faced by the trial teams in domestic cases such as the Colgan Air 3407 and Comair 5191
- Ethical considerations when selecting and preparing experts in aviation accident litigation
- The future of aviation, aerospace law, and litigation in connection with drones and commercial space/sub-orbital travel

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# Agenda

## Thursday: June 4, 2015

**8:00 – 8:25 a.m. Registration/Continental Breakfast**

**8:25 – 8:30 a.m. Welcome/Opening Remarks**

Timothy S. Tomasik and Jeremy I. Hager

**8:30 – 9:30 a.m. Protecting the Cockpit from Terrorists to the Mentally III: Lessons We've Learned from the 9/11 Litigation to the Germanwings Tragedy**

This panel will discuss many of the interesting substantive and procedural aspects of the 9/11 wrongful death and property damage litigation. The discussion will highlight the discovery and mediation process that lead to the \$1.2 billion dollar settlement of the World Trade Center property damage claims. The panel will address the evolution of aviation security from 9/11 to the recent Germanwings tragedy.

**Panelists:** Steve Badger, Christopher R. Christensen, Jeff Ellis, Timothy S. Tomasik

**Moderator:** Michael E. Elsner

**9:30 – 10:30 a.m. Helicopter Accidents: A Review of Recent Cases of Interest**

This panel will examine the unique issues and challenges of prosecuting the Helicopter Emergency Medical Services operation. HEMS flights are sometimes operated under Part 91, Part 135 or as Public Use flights. The incidents of serious and fatal crashes have been consistently higher than virtually any other type of aviation over the past several years. Our expert panelists will examine some of the specific accidents that reflect the causes of such accidents. The panel will provide an overview of relevant statistics and discuss factors such as pilot errors in judgment under the difficult circumstances associated with HEMS operations. The panel will also discuss potential methods for reducing the risk of accidents including terrain warning systems, night vision instrumentation, and improved operational procedures which foster more objective judgment in whether or not missions should even be attempted. Panelist will also share insight into the unique issues associated with HEMS litigation.

**Panelists:** Donald Migliori, James Rodriguez, Kevin Lenehan, Jonathan M. Stern

**Moderator:** Scott Brooksby

**10:40 – 11:40 a.m. Foreign Aviation Accidents: Where Should the Passenger Cases Land and the Other Matters of Convenience?**

The panelists will examine significant legal issues encountered by the airlines and manufacturers in seeking forum non conveniens dismissal and plaintiffs' strategies in overcoming such venue challenges, including the presence of U.S. passengers and defendants, the "fifth jurisdiction," treaty-jurisdiction over third-party actions, choice-of-law complexities, the effect of criminal investigations abroad, and "unavailable" forums.

**Panelists:** Megan W. Bennett, Andrew Harakas, Steven C. Marks, Eugene Massamillo

**Moderator:** Judy R. Nemsick

# Agenda (cont'd.)

11:40 – 12:40 p.m.

## **Handling Aviation Disaster Claims: An Insiders' View from the London Market**

The 24/7 news cycle spends weeks speculating on what happened to in any given aviation tragedy—let's face it; that's what sells advertising time. Meanwhile, the aviation insurance market responds quickly and finds a way to serve the needs of its insureds in the face of a disaster. But significant questions remain behind the scenes as to how these losses are ultimately allocated among the relevant policies and subscribing underwriters in the respective War and Allied Perils markets. Join our panel of London Market insiders as they bring us up to date on what's been happening outside of the public view as insurers seek to manage some of the major aviation losses in recent years.

**Panelists:** Simon Clark, Tim Marland, Roberta Miranda, Marko Ninkovic

**Moderator:** Jeremy I. Hager

12:40 – 1:00 p.m.

## **Lunch Break**

1:00 – 2:00 p.m.

## **KEYNOTE ADDRESS**

### **Flying Special Missions: From Explosives to Ebola**

Randall H. Davis is Senior V.P. and General Counsel of Phoenix Air Group, Inc., a provider of specialized flight missions to Government and Industry. He is a pilot and serves as an international captain on the company's Gulfstreams and Learjets. Mr. Davis will share Phoenix Air's involvement over the years in special missions, including the following: Electronic warfare training to US and other government military organizations; flying the only known civilian aircraft on the evening of 9/11; worldwide transport of explosives and other special cargo; worldwide transport of medical patients; and transport of infected and exposed Ebola patients and personnel.

2:00 – 3:00 p.m.

## **Does Location Matter for Federal Preemption: Aircraft Owner/Lessor Liability Following *Vreeland v. Ferrer***

This panel examines the scope of federal preemption over state law claims against owners, lessors, and secured parties for injury caused by aircraft equipment over which they have no actual possession or control. The discussion will address courts' differing interpretations of 49 USC 44112, as well as relevant insurance and indemnification considerations arising out of the continued split in authority.

**Panelists:** Christopher R. Barth, Jeannette C. Lewis, Nicolas P. Stable

**Moderator:** Marc L. Antonecchia

# Agenda (Cont'd.)

**3:00 – 4:00 p.m.**

## **Trying Domestic Disasters: Common Themes from Lexington and Buffalo**

This panel will discuss the common themes and issues that arise during the trial of regional air crash cases using Comair Flight 5191 and Colgan Air Flight 3407 as examples. Highlights from both trials will be addressed including jurisdictional issues, preemption, choice of law, discovery, punitive damages, the use of animations at trial and the solicitation of victims of aircraft disasters.

**Panelists:** John P. Freedenberg, Joe Taccetta, David J. Harrington, Michael S. Krzak, Linda Schneider, Keith Williams  
**Moderator:** Jason Vincent

**4:00 – 4:10 p.m.**

## **Break**

**4:10 – 5:10 p.m.**

## **Ethical Considerations with Expert Witness Preparation & Selection**

This panel will address the types of experts that are typically utilized in accident litigation, the ethical considerations with who to hire (background, credibility, & daubert challenges), what information can be shared, confidentiality issues, the exchange of data and the impact.

**Panelist:** Mark A. Dombroff, Darcy Osta, Steven M. Sandler  
**Moderator:** Pooja Gardemal

**5:10 – 6:10 p.m.**

## **The Future of Aviation: Drones Down Low to Space Travel on High**

The aviation world is in a constant state of change and improvement. This panel of experts will address the issues they are facing in their efforts to open up the aviation and aerospace markets, whether it is challenging the U.S. Department of Transportation to permit unmanned flight in U.S. airspace or manned flight in space.

**Panelists:** Steven Allen, Thomas E. Dunlap, Mark E. McKinnon  
**Moderator:** Diane Westwood Wilson

**6:10-6:25 p.m.**

## **Closing Remarks**

Timothy S. Tomasik and Jeremy I. Hager

**6:30-8:00 p.m.**

## **Reception**



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