

P I T T S B U R G H

BUSINESSTIMES

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Learning “plane” English can help lawyers in aviation litigation

We had been digging through the rubble of airplane accidents for years, trying to solve one technical puzzle after another as we defended clients in a variety of aviation cases.

As lawyers, we always have been comfortable learning every detail of our clients’ products. But we decided that learning the product in aviation cases just wasn’t enough for us. So, to better serve our aviation clients, two years ago we began training to become FAA licensed pilots. We had no idea that flight training would be so similar to litigating.

Mastering every detail necessary to defend an aviation products liability case successfully can be a daunting task. Each plane is different, the weather conditions vary, the skills of the pilots range from the most accomplished to the least trained and the combination of instruments and component parts is rarely the same. And, because airplanes today are safe and well-engineered, unraveling the facts of an air crash case (large or small) is a very complicated mission.

We now have done it multiple times, starting in 1994 when we were part of a trial team in a federal court case arising from the crash of a 737 airliner near Hopewell. We have defended clients in high-profile matters, including the case involving the crash, on a rainy night, of a twin-engine plane that carried former Missouri Gov. Mel Carnahan. And, we have litigated many general aviation accident cases across the country, each with a different set of intriguing facts.

Flight lessons have enhanced our legal



INSIDER'S VIEW

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abilities in very practical and usable ways. For example, the training has taught us how to communicate very technical concepts to judges and juries in understandable, “plane” language. And, as we anticipated, flight lessons have enhanced our ability to spot important nuances in these complicated cases. We can identify vital evidence quickly and with confidence. We also have learned that flying an airplane really can be very similar to trying cases, as remarkable as that may seem.

The “flight preparation” (or discovery) phase of litigation has many parallels to “preflighting” a plane for air travel. Before starting the plane’s engine, it is important to complete a comprehensive preflight inspection. We must confirm the structural integrity of the aircraft, make sure there is adequate fuel and oil, test the engine and evaluate the instruments before takeoff. The discovery phase of litigation is the same. Before taking any case to trial, we must confirm the integrity of our defense by researching and testing various facts and

theories through questions, reviews, and analysis. All of the fundamentals must be covered.

The “takeoff” (or litigation) phase is likewise similar to flying. As pilots (almost), we must demonstrate competency with proper operating procedures, compliance with FAA regulations, and proficiency in safely piloting and navigating the aircraft. As lawyers, we must be skilled in courtroom protocol and procedural rules, we must understand and articulate the applicable law and we must synthesize the evidence and testimony of many different witnesses and experts. Like talking with the Air Traffic Control, communicating in the proper phraseology to the court and jury is essential.

The “landing” (or verdict/settlement) phase of litigation also has a relationship to aviation. In landing an airplane, everything must come together smoothly at the exact time the plane touches down. We must account for wind direction, other airplanes in the flight pattern, the length of runway, pitch, and airspeed. Each factor plays an essential role in a safe and effective touchdown. As lawyers, to land a good result for the client we must account for our client’s business objectives, cost, risk and the speed with which we can bring a dispute to resolution.

Flying has provided us with the edge of firsthand piloting experience and a wealth of technical knowledge. It also has made us more aware of just how similar our goals are, on the ground and in the air.

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