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Liability – It's Often About Finding Negligence

Being a lawyer, a simple and obvious question that is often asked of me is "What is my liability" as the owner of the aircraft or the pilot on the aircraft or as the person responsible for maintenance or the agent arranging the flight? The answer, unfortunately, is not so simple, mainly because liability for something that may have gone wrong is generally decided on a case-by-case basis, and liability will require that certain facts and circumstances show that the person was responsible for what went wrong, either intentionally or because the proper care wasn't taken. In almost all of the cases that we are talking about, the lawsuit is based on the theory that someone was negligent.

The law of each individual state governs negligence, so there could be variations that affect the success or outcome of a lawsuit, depending on which state the case was brought. Nevertheless, there are a few general requirements pertaining to the ability to hold someone liable in a lawsuit that is based on someone's negligence. One, there must be negligence, which is defined in the law as the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Two, there must be a duty owed to the person who has been harmed, which must be evident from the relationship between the parties. And, three, for the court to hear a lawsuit based on negligence, there must be harm done to someone; in other words, someone must have suffered some damages that a court could then remedy by an award of money, or some other equity, if the negligence is proved.

Negligence is a tort, which is a civil (as opposed to criminal) wrong but does not include a breach of contract. Negligence is distinct from other torts such as intentional torts (punching somebody in the nose) or from torts for which strict liability is imposed. There are sometimes legal defenses, such as the contributory or comparative negligence of the person making the claim which provides that if the person who is harmed has some fault in the harm, then the claim may be prohibited or reduced by the extent of that person's participation in causing the harm.

In the aviation context, operators and maintainers of aircraft owe a duty of care in their conduct. As long as the person exercises due care in their actions, there should be no negligence, even if a harm occurs. However, if the person fails to exercise due care, e.g., in not following a rule or in skipping a step in a process, the person may be found to have been negligent and could then be potentially liable if the negligence causes damage. And, if the person who was hurt participated, facilitated, or caused the negligent actions, that could serve to protect the person against full liability for the resulting damages.

The good news is that there are very few lawsuits initiated against individuals in aviation, especially if we're talking about pilot, flight instructor, designee, or mechanic error. There are practical reasons for that and the biggest reason is that plaintiff lawyers are usually looking for a "deep pocket"

since in these kinds of lawsuits, the lawyer only gets paid if there is a recovery. If possible, then, the lawyer will file the lawsuit against an entity, who almost always has insurance, and the insurance company ordinarily defends the lawsuit and pays any judgment or settlement, without any contribution by the individual. Since insurance is more readily available to individuals than it used to be, individuals might prove to be a more attractive target in a lawsuit than they have been in the past.

Are there ways to avoid a lawsuit? Well, we can't stop someone from filing the lawsuit, but we can take actions to avoid a reason to bring a lawsuit and to keep someone from being successful in the lawsuit. Incorporate quality control measures into your work in aviation; that is, stay informed, educated, and proficient, and you cut down the chances of something going wrong. Double check what you do to catch mistakes before they cause trouble. Employ conservative personal minimums, and you reduce the risk of being exposed to something going wrong. And, if you can afford it, get insurance and protect yourself and your loved ones against having to pay an attorney or a judgment from personal assets. As with many things, begin by using good and prudent judgment.

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