

Lessons Learned from the Airline Industry About Responding to a Crisis



In the hit television show *Scandal*, Kerry Washington's character, Olivia Pope, is a crisis manager, who, with her team

of associates, is called upon to fix problems and resolve crises. If it were only that

easy. Every day there are reports of natural disasters, cyber-security breaches, product recalls, and mass transportation accidents occurring somewhere in the world. These events present very real crises for certain individuals and businesses. No industry is immune—the form or nature of the risk may simply vary. The recent public health emergency caused by the spread of the Ebola virus shows how easily a cri-

sis may unexpectedly impact a variety of industries. Hospitals and health care providers were obviously affected, but when it was discovered that a nurse who had been exposed to the virus and later tested positive had taken a commercial flight from Texas to Cleveland, the airline took steps to decontaminate the aircraft and contact passengers on that flight, as well as the passengers from the five flights before the decontamination.

Whether it is called emergency response or crisis management, in-house counsel should assess its employer's vulnerability to various risks and ensure that plans are in place to respond when faced with such an event. Organizations that have effectively applied a comprehensive emergency planning process are better able to cope with the impact of adverse events. Moreover, having an emergency response plan will lessen the impact on legal and financial aspects of an organization during times of stress.

One industry that has experience dealing with certain crises and is required by law to have an emergency response plan is the airline industry. Valuable lessons can be learned from their experiences and some of the practices they employ.

Emergency Response Plans of Air Carriers

Commercial airlines must be prepared to respond should one of its planes crash or suffer another mishap while carrying passengers. Airplanes have been hijacked, used by terrorists in attacks, unintentionally caught in military conflict, adversely



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impacted by natural disasters, and become lost. Imagine the issues that must be addressed should such an unfortunate incident occur. The airline needs to secure the passenger manifest to identify each passenger and crew member that was on board the flight. Family members of those who died or were seriously injured must be notified, and the airline should anticipate receiving a flood of calls from people inquiring whether a loved one was on the flight and asking about the cause of the accident. Some family members may want to travel to the accident site, and the air carrier will need to assist them in making those arrangements and provide them with a place to stay.

Surviving passengers may need hospitalization. Others may have emotional injuries and be thousands of miles from their families and home. If not destroyed in the accident, their luggage has probably been contaminated with fuel or fire retardant, so they will need clothes, toiletries, and a place to stay until they can resume their travel. Some may have even lost medication or eyeglasses in the accident that need to be replaced. As is evident, their needs can be great and diverse.

Internally, virtually every aspect of the organization is affected by such an incident. The safety department is working with the National Transportation Safety Board (NTSB), the federal agency tasked with investigating and determining the probable cause of the accident, providing information, and assisting with the investigation. Risk management must review the insurance policies for coverage and communicate with its insurers about the event, as well as arrange for the removal and preservation of the wreckage, if it has been found, once the NTSB has approved its release. Operations will have to reassign crews and aircraft to cover the segment the accident flight crew and aircraft was supposed to fly. Human Resources will have to deal with workers' compensation, employee assistance, and other personnel issues involving both the flight crew and airline employees involved in assisting with the emergency response. Corporate Communications will be busy responding to requests from the media about the accident and deciding how to address the barrage of

social media posts that will undoubtedly follow. These are examples of how just a few of the myriad of departments are impacted by such a crisis. This article does not delve into each of these areas. The focus of this article is on the emergency response plans, particularly as they apply to assistance provided to families and those injured in an

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accident, and how those plans have developed and improved as the industry learned valuable lessons from each major disaster.

Prior to 1996, air carriers were not required to have emergency response programs. Some of the mainline carriers, like American Airlines, had already formed an emergency response team of trained volunteers with a full-time director dedicated to organizing and coordinating their response, but many other carriers were not as organized and either had programs that did not sufficiently address the needs of passengers and their families or had no program at all. This became evident in the aftermath of ValuJet Flight 592, which crashed in the Florida Everglades on May 11, 1996, killing all 110 people on board, and TWA Flight 800, which exploded shortly after take-off and crashed into the Atlantic Ocean off the coast of New York on July 17, 1996, killing all 230 people on board. Air carriers, local responders, and federal agencies did not provide an effective coordinated effort to meet the needs of family members and survivors after these accidents. Congress therefore took action and passed the Aviation Disaster Family Assistance Act of 1996 in October of that same year.

Aviation Disaster Family Assistance Act of 1996

The Aviation Disaster Family Assistance Act of 1996 (the "Family Assistance Act") brought definition and clarity to the duties and responsibilities of the primary entities involved in the response to aviation disasters: the airline, the NTSB, and the American Red Cross (described in the Act as "an independent nonprofit organization, with experience in disasters and post-trauma communications with families" designated by the NTSB). 49 U.S. Code §1136(a)(2). The Family Assistance Act also attempted to protect the families of accident victims from predatory "ambulance chasers" by prohibiting attorneys and their representatives from having unsolicited communication concerning a potential action for personal injury or wrongful death with a victim's family for the first 30 days after the accident. *See* 49 U.S.C. §1136(g)(2). The 30-day solicitation-free period was extended to 45 days in 2000. *See* Pub. L. 106-181 §401(a)(1) (2000).

The Family Assistance Act applies when there has been an aircraft accident within the United States involving an air carrier that "result[s] in a major loss of life." 49 U.S. Code §1136(a)(1). Accidents outside the United States or within the United States that do not result in fatalities are not governed by the Act, but air carriers may still choose to comply with the Family Assistance Act in responding to such events.

Foreign Air Carrier Family Support Act of 1997

In 1997, a law similar to the Family Assistance Act was passed imposing the same requirements on foreign air carriers seeking operating certificates from the Department of Transportation. The Foreign Air Carrier Family Support Act of 1997 (the "Foreign Air Carrier Act") requires that foreign air carriers assure the U.S. Department of Transportation and the NTSB that they will "address[] the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier" by adhering to a "family assistance plan in the event of aircraft accidents resulting in major loss of life." 49 U.S. Code §41313(b). The Secretary of Transportation must deny a foreign air carrier's permit to

operate if the foreign carrier fails to include a plan with the required content in its permit application. 49 U.S. Code §41313(d).

In 2008 Congress passed a comparable bill that focused on rail passenger accidents. The Rail Passenger Disaster Family Assistance Act sets out comparable requirements for Amtrak and future intra- and interstate high-speed passenger rail operators and the NTSB for addressing passenger needs following a railway accident. See 49 U.S. Code §§1139 (NTSB responsibilities) and 24316 (operator's duties).

Duties of the Air Carrier Under the Acts

Both the Family Assistance Act and the Foreign Air Carrier Act require that airlines develop an emergency response plan and establish minimum requirements of what must be addressed in each plan. They do not limit the assistance the carrier may provide. First and foremost, the carriers must address how family members will be notified of an accident. The carrier must be prepared to handle a flood of calls from the public asking if a loved one was on board the flight and should recognize that these calls should be routed through a dedicated telephone line and not the company's normal reservation line. It is also important that families be notified as soon as possible, before the passenger's name has been released to the public, and that the difficult message be delivered by a member of the Red Cross or a "suitably trained individual" in person, if possible. 49 U.S. Code §41113(b)(2). For these reasons, the legislation requires the air carriers' plans to specifically include:

- A plan for publicizing a reliable toll-free number for the passengers' families;
- A process for notifying, in person if practicable, the families of passengers involved in an aircraft accident;
- An assurance that such notice will be provided to the families as soon as possible after the identity of a passenger has been verified; and
- An assurance that, upon request of the family of a passenger, the air carrier will inform the family of whether the passenger's name appeared on the preliminary passenger manifest for the flight.

49 U.S.C. §§41113 (b)(1-3) and 41313(b) (1-3).

The importance the government places on this aspect of a carrier's plan became especially evident when the Department of Transportation fined Asiana Airlines \$500,000 for the airline's deficient efforts to notify families after a Boeing 777 crashed while landing at the San Francisco International Airport in July 2013. Consent Order, *Asiana Airlines, Inc. Violations of 49 U.S.C. §§41313 and 41712*, DOT Docket OST-2014-0001 at 2-3 (Feb. 25, 2014) available at <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2014-0001-0006> (last visited Oct. 31, 2014). The crash killed three Chinese teens and injured more than 200 of the 307 people aboard.

As the DOT explained in its consent order, for approximately one day following the crash, the South Korean-based airline failed to widely publicize any telephone number for family members of those onboard, and the only number generally available to the public that family members could call was Asiana's toll-free reservations line. Locating this phone number on Asiana's website required significant effort. *Id.* at 2. The reservations line did not include a separate menu option for calls related to the crash, and callers were required to navigate through cumbersome automated menus before being connected to an Asiana employee. *Id.*

The consent order reports that it took Asiana two full days to successfully contact the families of just three-quarters of the passengers and the families of several passengers were not contacted until five days following the crash. *Id.* at 3.

Passenger Manifests

The Family Assistance Act also sought to resolve problems that had revolved around the passenger manifests. Air carriers were reluctant to notify families or release the passenger manifest until the identity of everyone listed had been confirmed. Understandably, the airline did not want to inform a family that their relative had perished in an accident when that individual wasn't even on the flight. While this is not as much of a concern today with the post 9/11 security measures that are in place, at the time the legislation was passed, it was not uncommon for a passenger to travel under a different name, so the verification

process could take several days, which was at odds with the need to notify families as soon as possible. The legislation resolved the problem by requiring the air carrier to provide to the NTSB director of family support services and the Red Cross, if requested, a list of the passengers aboard the plane that is "based on the best available information at the time" and to periodically update the list. 49 U.S.C. §41113 (b)(4). The air carrier was to notify the families of passengers involved in an aircraft accident as soon as practicable after the air carrier has verified the identity of a passenger, whether or not the names of all of the passengers have been verified. 49 U.S.C. §41113 (b)(3).

The Family Assistance Act insulates the air carrier from liability for preparing or providing a passenger list in accordance with the Act unless the carrier was grossly negligent or acted with intentional misconduct in doing so. 49 U.S.C. §41113(d). It also prohibits the NTSB from releasing to any person the information on a list obtained from the carrier unless the information is about a passenger and the NTSB director considers it appropriate to release the information to the family of the passenger. 49 U.S.C. §1136(d)(2).

Personal Belongings and Remains

An air carrier must consider how it will recover, clean, itemize, store, and return any luggage and belongings to the passenger or the families and provide assurance that the family of each passenger will be consulted about the disposition of any remains and personal effects of the passenger. 49 U.S.C. §41113 (b)(5). The carrier must also agree to return to the family any possessions of the passenger, regardless of the condition, if the family requests them, unless the possession is needed for the accident investigation or any criminal investigation, and must be prepared to retain possession of any unclaimed belongings for at least 18 months. 49 U.S.C. §41113 (b)(6) and (7). The luggage must be decontaminated and salvaged if there was a fire or fuel leak in the accident, and the process to catalog belongings that are often strewn about an accident site and identify them with the proper passenger can be painstaking. Most carriers choose to contract with a third-party that specializes in these services for this

aspect of their emergency response plan, but that should be pre-arranged and not set up only after an accident has occurred. In the consent order fining Asiana Airlines \$500,000 for failing to adhere to the assurances given in its plan, the Department of Transportation included failure to have a pre-existing contract for the cleaning and returning of passenger property as one of the airline's failures. Consent Order, *Asiana Airlines, Inc. Violations of 49 U.S.C. §§41313 and 41712*, DOT Docket OST-2014-0001 at 3 (Feb. 25, 2014) available at <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2014-0001-0006> (last visited Oct. 31, 2014).

Family Assistance

The air carrier is expected to establish a family assistance center at a hotel or facility where the families may gather and provide accommodations for family members at a location near the crash site and provide transportation to that location. Some carriers accomplish this by forming an Emergency Response Team (ERT) of volunteers to assist passengers and their families after major aircraft-related emergencies. When an accident occurs, select ERT members are activated and assigned to passengers, crew members, and their families, and perform various duties. For example, they may make flight arrangements, assist with other transportation; arrange hotel accommodations; provide phones, food, and emergency clothing; and assist with the return of personal belongings. The ERT members may also escort passengers or family members attending scheduled accident-related events, including memorial services, funerals, and visits to the accident site. While the ERT members do not perform counseling or other emotional support functions, they have been trained about the emotional aspects of accident response and will coordinate access to the appropriate professionals on request. The carrier's plan must contemplate an adequate allocation of resources to accomplish all of this and provide proper training of the employees and agents who are to meet the needs of survivors and family members.

American Airlines was one of the first domestic airlines to establish such a program. It created the Customer Assistance

Relief Effort (CARE) in 1993 from volunteers among the ranks of American Airlines and American Eagle to assist passengers and their families after major aircraft-related emergencies. See <http://www.aa.com/i18n/amrcorp/corporateInformation/facts/care.jsp> (last visited Oct. 31, 2014). The CARE members receive special intensive

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training with detailed information about logistics, the company's crisis plan, the Emergency Response program, and the emotional aspects of accident response.

CARE team members are mobilized through a notification process that makes them available to help almost immediately. Composed of over 1,000 specially trained volunteers throughout the United States, Latin America, the Caribbean, Europe, Japan, Mexico, and Canada, members speak more than 60 languages. *Id.* When needed, one group works to rapidly establish contact with those involved, while others are assigned to provide direct personal assistance.

Because the unique nature of their role places heavy demands on team members' time, home life, and emotions, employees must participate in an intensive two-day training session, developed by American Airlines with assistance from emergency management consultants and employees involved with previous emergencies in preparation for serving as a CARE team member. Volunteers may only join CARE after successfully completing training and discussing the commitment with their families. *Id.*

While the large legacy carriers may have sufficient personnel and resources to form ERTs to implement their plans, how are foreign carriers or smaller domestic airlines supposed to comply with the requirements to quickly activate an emergency response plan in the United States when their base operations are several thousand miles away? Most are affiliated with legacy carriers through a codeshare or alliance agreement. These relationships may include contractual agreements by the domestic carrier to provide emergency response services until the foreign carrier is able to activate its plan and get sufficient ERT members to the accident site.

When the accident involving Asiana Airlines Flight 214 occurred at San Francisco International Airport over the fourth of July weekend in 2013, it was 3:00 a.m. on Sunday in Asiana's corporate office and Asiana only had 12 employees on duty at the San Francisco International Airport. Personnel from its regional facility in Los Angeles were delayed in getting to San Francisco because the airport was closed indefinitely due to the wreckage on the runway, causing them to have to drive eight hours to get there. Fortunately, Asiana was a member of the Star Alliance with United Airlines—which activated its emergency response team and provided personnel and services until Asiana was able to take over the emergency response duties.

Unfortunately, Asiana failed to allocate sufficient resources in its initial response to the accident, according to the Department of Transportation, because the airline took two days to send a sufficient number of trained personnel to San Francisco and initially lacked an adequate number of staff able to communicate in the languages spoken by the majority of the flight's passengers (Chinese and Korean). Consent Order, *Asiana Airlines, Inc. Violations of 49 U.S.C. §§41313 and 41712*, DOT Docket OST-2014-0001 at 3 (Feb. 25, 2014) available at <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2014-0001-0006> (last visited Oct. 31, 2014). The Department of Transportation found that it was not until five days following the crash that Asiana possessed the resources necessary to carry out all of its responsibilities under the Family Assistance Act. Consent Order, *Asiana Airlines, Inc. Violations of 49 U.S.C.*

§§41313 and 41712, DOT Docket OST-2014-0001 at 3 (Feb. 25, 2014) *available at* <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2014-0001-0006> (last visited Oct. 31, 2014).

Coordination of Response Duties with the NTSB and the Red Cross

A critical aspect of the air carrier's emergency response is the coordination with other agencies and entities involved with the post-accident response. Fortunately, the Family Assistance Act delineates the responsibilities of the carrier, the NTSB, and the Red Cross, thus facilitating coordination and eliminating confusion and duplication of efforts.

Duties of the NTSB

Most people are familiar with the NTSB's role as the federal agency responsible for investigating transportation accidents that occur in the U.S., but are not aware that the agency also has a role in providing assistance after such disasters. The NTSB is responsible for coordinating the efforts of the air carrier, local responders, and federal agencies for the family assistance response.

Upon notification of an airline accident in the U.S. involving fatalities, the Chairman of the NTSB will designate and publicize the name and phone number of a director of family support services from the NTSB's Transportation Disaster Assistance division. This individual will serve as a point of contact within the federal government for the families of passengers involved in the accident and a liaison between the air carrier and the families. 49 U.S. Code §1136(a)(1).

The Family Assistance Act clarifies that the NTSB has the primary federal responsibility for coordinating the recovery and identification of victims and the release of accident investigation information to family members while at the accident location and during the investigative process. 49 U.S. Code §1136(b). One of the significant changes by the Act is that the NTSB became the point of contact for family members to receive information about the accident and ensures that the families are briefed, prior to any public briefing, about the accident, its causes, and any other finding from the investigation and invited to attend any public hearings and meetings of the Board about the accident. 49 U.S. Code §1136(e).

Duties of the Red Cross

Upon notification of an accident, the Chairman of the NTSB will also designate (and publicize the name and number of) an independent nonprofit organization, typically the Red Cross, which has the primary responsibility for coordinating the emotional care and support of the families. 49 U.S. Code

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§1136(a)(2). This includes making sure there is an environment in which the family members may grieve in private, meeting with the family members who travel to the accident site, and contacting those who don't, then periodically following up with the family members after the accident "until such time as the organization, in consultation with the director of family support services... determines that further assistance is no longer needed." 49 U.S. Code §1136(c)(3). The Red Cross is also involved in arranging a suitable memorial service, in consultation with the families. 49 U.S. Code §1136(c)(5). The Family Assistance Act requires the Red Cross to coordinate with the air carrier "so that the resources of the air carrier can be used to the greatest extent possible to carry out [these] responsibilities." 49 U.S. Code §1136(f).

Developing an Emergency Response Plan

While a crisis can be challenging, it also presents an organization with an opportunity. An organization can make the most of this opportunity when it has prepared for such an emergency, planned for responding to it, and practiced its response in

emergency drills. Organizations that refuse to develop an emergency response plan, believing they do not have a problem or that it won't happen to them, are typically the ones that wind up facing a crisis.

Some issues to consider when formulating an emergency response plan include:

- What type of crisis is the company likely to encounter?
- What would a successful response to such a crisis be?
- What steps must be taken to protect the health and safety of the public and the company's employees in the face of the crisis?
- Has company leadership bought in to the plan? An emergency response plan must start with senior management and filter down.
- Who should be included on the emergency response team? There should be a director, an executive, and core and support members of the team. Consider designating a back-up for each member as well.
- How will ERT members be recruited and trained so they can fulfill their roles and responsibilities?
- Who is responsible for notifying local or regulatory authorities and coordinating with them? Consider meeting with public emergency services to understand their capabilities to stabilize hazards that may occur at the organization's facilities.
- Who will decide whether the Emergency Response Plan is activated and the level of resources that will be activated in response to the crisis? It is generally easier to commit too many resources and scale down than to allocate too little and then have to scramble to get more resources.
- What is involved in activating the plan?
- Are there specific laws or regulations that pertain to the emergency response for a particular crisis? Ensure they are addressed and that compliance with the regulations is included as part of the plan.
- How does the organization want to be perceived by its customers? The public? Its own employees? Is the organization's response consistent with the image it wants to deliver?

- Who will serve as the company spokesperson during the crisis?
- Who is responsible for preserving relevant operational evidence?
- What impact is anticipated on normal operations and how will this be addressed?

Practice Drills

Once the emergency response plan is drafted, organizations should follow the example set by the airlines and conduct formal practice drills of their emergency response plans at least annually. Practice drills serve several purposes. First, they help prepare team members and thus eliminate confusion and reduce mistakes during an actual crisis. Second, practice drills serve to identify potential problems and outdated procedures that need to be addressed. While it is impossible to anticipate every possible contingency, practicing the emergency response plan with various contingencies gives team members familiarity and confidence when facing those same contingencies in a real crisis and frees the decision-makers to focus on addressing any unanticipated contingencies. Debriefing sessions should be held after each drill to discuss what worked and what didn't, and then the plan should be modified to address any areas that can be improved upon.

Implementing the Plan

A company may not be able to control the events that create the crisis, but it can control how it responds to the crisis. In the age of social media, the company's every action will be reported—not only by the press but also by at least a few passengers. CNN reported that Malaysia Airlines notified the families of passengers on flight 370 by text message that the plane had been lost and all passengers were presumed to be dead. Images of the text message and the response of the devastated family members to the message circulated on Twitter, leaving a negative impression of the company and its emergency response efforts.

To avoid duplicating such mistakes, the following lessons should be considered when implementing an emergency response plan:

- Know your priorities and place these above procedures. First and foremost

should be the safety and care of individuals and protecting and guarding the public. The company's public image and its reputation are secondary.

- React quickly.
- Execute the plan.
- Keep senior management informed.
- Transition command to the site and be

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sure someone there has the authority to act to protect public safety. Don't let relief efforts be dictated by those who are not present at the scene.

- Coordination is key. Coordinate emergency response efforts within the organization so other departments know what is being done, as well as with public service agencies involved in the response efforts, if applicable.
- Use checklists to serve as reminders of tasks that must be performed. It can be easy to forget in times of crisis and checklists can prevent that from happening.
- Be honest and accountable when sharing information about the incident. Cover ups eventually get exposed and can cause more damage than the original matter that one tried to conceal.
- Train employees not to speculate about the cause of the accident or emergency. Not only may their speculations be inaccurate, but they could also be admissible in court as admissions of a party and fail to take into consideration how the families of victims may respond to such comments.
- Respect cultures of others when handling emergency response.
- Be mindful that employees responding to a disaster can be traumatized by the

experience as well. Relieve from duty those employees who are unable to work due to the emotional stress of the crisis and help them receive counseling and assistance.

- Debrief afterwards and determine where improvements may be made.

Conclusion

A final lesson that can be learned from the airline industry's experience in handling emergency response is to ensure that the organization is monitoring social media. It is likely to be one of the first sources of information about the incident and may include photos and other data that could be useful in defending litigation that is likely to arise once the dust has settled. It can also inform the organization of deficiencies in its emergency response efforts. After Continental Airlines Flight 1404 went off the runway at Denver International Airport in 2008, a passenger immediately began posting tweets with details of the accident and his experience, including photos of the accident scene. He continued to tweet throughout the ordeal, describing the airline's actions in taking care of the passengers and even complaining about his inability to get a drink from the bar in the airline's club. This tweet was picked up by a blogger who then posted an article "Continental keeps booze away from passengers."

Today, most airlines and large corporations have learned that social media can be a valuable tool in responding to customers' concerns and quickly communicating the organization's message with affected individuals and the public. This lesson should not be disregarded when responding to a crisis.

While the odds may be slim that an organization will experience a crisis, it is prudent to establish and practice an emergency response plan should such an event ever occur. A popular saying among emergency response directors in the airline industry is to "prepare for the worst and hope for the best." In doing so, most airlines are finding that they are better prepared to handle each new crisis. Other industries could learn from their example.

