

With airlines shedding assets, changing labor agreements and leasing equipment more frequently, aviation lawyers have never been busier.

Aviation law takes off

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Skyrocketing fuel costs, wage battles with unions and a general decline in business travel have combined into a perfect storm that has battered the airline industry. Several big carriers are already in bankruptcy — and Northwest Airlines is warning that it may join them if it cannot



Aviation attorneys Robert Fafinski and Donald Mark have noticed an increase in transactional work from airlines.

reduce its labor costs. Times have never been worse for the airlines — or better for the outside lawyers who handle their legal work.

For aviation lawyers, the airlines' loss of business means more

work for them, particularly in the area of negotiation for the sale, purchase or lease of aircraft.

"We are busier now that things are bad," said Eden Prairie attorney Robert R. Fafinski Jr., who has been practicing aviation law for more than two decades. "When the economy recovers there will still be work to do, but not at such a frenetic pace."

A busy time

The airlines' misfortune may be good fortune for some investors.

For example, one aspect of Fafinski's practice that has grown significantly in recent times is representation of hedge-fund clients. He explained that he assists those clients with buying debt on airplanes and then if necessary, remarketing them somewhere else in the world to another airline.

When the airlines hit difficult times, "the uncertain marketplace causes some to look at whether there is an opportunity to [profit]," he observed.



Facing an uncertain future, airlines have increasingly been forced to use short-term leases to meet their aircraft needs. As a result, aviation lawyers have seen their workload soar as airlines seek to negotiate and renegotiate aircraft leases more frequently.

Legal needs of airlines may change as their condition worsens or improves

Aviation | From Page 1

Fafinski has also seen exponential growth in his transactional practice, which includes assisting clients in negotiating the purchase, sale or lease of commercial aircraft and offloading or remarketing airplanes that are no longer needed.

According to Fafinski, when the economy is not doing well, leasing companies lease planes on a much shorter term. "They are afraid to take a long-term risk in bad times," he explained, pointing out that this leads to more activity on an airplane and more transactional work for attorneys.

"All of this activity has, in the past two to three years, tripled the number of aircraft transactions we've done," Fafinski said. "We expect between 50 and 100 transactions involving commercial airplanes this year. It's just phenomenal how busy we are."

Hopkins attorney Gregory J. Reigel, who practices primarily in the general aviation sector, said that his work has also picked up in light of the problems the big airlines are encountering.

Reigel explained that his corporate and transactional aviation work in particular, including buying, selling and leasing aircraft for smaller or charter airlines has increased substantially as these options have become more popular.

The events of 9/11 caused business to increase in the corporate and charter industry because people don't want to stand in long lines at the airport or be subject to random pat downs at the airport, Reigel observed. "That adds time at the front and back end of a trip," he said.

Another reason behind the influx of business to the charter industry is that the service level of the legacy carriers is not what it used to be, he said, adding that travelers are also uncertain which airlines will be around in six months.

Naturally, bankruptcy attorneys are also busier these days. Fafinski explained that his firm employs several lawyers who represent creditors who may be affected by an airline's actual or potential bankruptcy. The attorneys analyze the risks of bankruptcy and the impact it would have on their clients' investments. They also do a lot of trading activity on unsecured creditor claims and get involved in the repossession of assets in bankruptcy.

Turbulent times

Some observers blame the 9/11 terrorist attacks for the turbulent times being experienced by the airlines. But aviation attorneys speculate that while 9/11 continues to play a role in the industry's economic downturn, there are a variety of other factors at work as well.

"Some people think that the airline industry spun out of control after 9/11, but in actuality, problems in the industry began at least a year before the terrorist attacks," Fafinski observed. "[The terrorist attacks] exaggerated the impact of overcapacity in the marketplace."

Fafinski noted that the events of 9/11 caused everyone involved in the industry to look at whether there is too much competition in the airline industry. "I think the resounding answer is yes," he added.

United Airlines was liquidating, but is now re-emerging, while U.S. Airways is planning to merge with America West, Fafinski observed. He predicted that until some large carrier actually

liquidates, the problems in the industry will continue.

Eden Prairie attorney Donald Chance Mark Jr., who has been handling aviation matters and defending airlines in crash litigation for more than 30 years, said that trying to run a business in these times of exploding oil prices, thorny labor issues and underfunded pension plans is almost impossible. "That's what these poor airlines are going through," he said.

Mark observed that legacy carriers are being undercut by new low-cost carriers that don't have the same labor issues and overhead. "It's really hard for them to be straddled with these obligations," he said.

Reigel agreed, adding the expense of enhanced security as another factor affecting the industry. Labor costs, consisting of as much as 80 percent of an airline's overhead, are killing the airlines, he said. "These things all add up."

Fafinski noted that the political climate has also negatively affected the airline industry. A lot of people are uncomfortable flying or traveling right now, he said, citing the 9/11 terrorist attacks in the United States as well as the recent bombings in London. "The public reacts to terrorist situations," he observed.

Survival plan

Some aviation experts opine that the major airlines must figure out a new business plan in order for the industry to survive.

"We need to rework the airline model in general," Reigel said.

Minneapolis attorney Stephen P. Watters, who represents plaintiffs in airplane crash litigation, agreed. "Other airlines have figured out a business model that is much more efficient. The old business model of four years ago doesn't work as well now," he said.

"We are going to continue to have airplanes," Mark observed, adding that major carriers may, however, have to revise the way they do business in order to compete. "It's a sign of the times we live in and a concern

Airline woes may affect plaintiffs' cases

The financial woes of the airline industry could have an impact on plaintiffs with claims pending against a troubled airline.

Attorneys who represent plaintiffs in aviation accident cases say that the threat of bankruptcy may force their clients to settle their claims much sooner than anticipated.


"The threat of bankruptcy is a new factor," said Minneapolis personal injury attorney John Dornik, who represents people injured in aviation accidents. "It's something to consider when trying to deal with the litigation. You are wading into new territory."

Dornik pointed out that most airlines are extremely well insured and will settle a valid claim within policy limits. If there is not enough insurance coverage, however, the plaintiff must look at a variety of other options, such as whether there are other assets available, or whether there is ample cash flow to cover a potential judgment, he continued.

In the case of a potential bankruptcy, the plaintiff may decide to settle earlier for less money, Dornik observed, adding that it is important to weigh all of the relevant factors before making that decision. "You need to wade through a penumbra of bankruptcy laws that are foreign to everyone, including us personal injury lawyers," he said.

Minneapolis attorney Stephen P. Watters, who also represents plaintiffs injured in aviation accidents, agreed. "There are more steps to figure out if an airline files bankruptcy," he said.

Watters explained that if a carrier is threatening bankruptcy, it's important to look at a variety of issues, including whether the airline is self-insured, what its deductible is and how it is structured, as well as the airline's insurance limits in general.

For example, last year Northwest Airlines had the ability to pay a claim that was beyond its insurance limits, but that's not true this year, Watters observed. "So insurance limits are an issue to consider," he observed. 



Minneapolis attorney John Dornik said that with the threat of bankruptcy to face, plaintiffs' lawyers are wading into new territory.

of this particular industry right now."


Despite the tough economic times, aviation lawyers have no doubt the airline industry will survive and aviation lawyers will continue to have plenty of work to do.

"The airline industry is very cyclical," Fafinski observed, noting that there is often a period of prosperity followed by a period of recession.

The political climate, especially the terrorist attacks taking place around the world, "has made recovery much more prolonged this time," Fafinski said. He added that he expects the bumps in the industry to continue for the next couple of years because the fundamental problems that exist in

the industry are continuing and need to be worked out.

Mark observed that the legal needs of the airlines may change as things in the industry deteriorate or improve. However, he predicted that aviation attorneys will continue to be busy. "We'll just get business in a different way," he said.

Mark added that if things do get worse before they get better, bankruptcy attorneys in particular will see their airline-related work boom. They'll step in and see a significant amount of activity because so many lease agreements and other areas are affected when an airline files bankruptcy, he said. 



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