



# CLIFFORD LAW OFFICES

**The \$110 Million Settlement**  
September 22, 1997



*In re Air Crash Disaster near Roselawn, Indiana  
on October 31, 1994*



Clockwise from lower left: Robert A. Clifford, Thomas A. Demetrio (in an advisory role) and Kevin P. Durkin were lead plaintiffs' counsel; Michael P. Connelly represented European aircraft manufacturer ATR; and Sidney Schenkier and Anton R. Valukas represented American Airlines in litigation over the 1994 crash of American Eagle Flight 4184 in Roselawn, Ind.

# CHICAGO LAWYER

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## Making a \$110-million crash settlement fly

by Abdon M. Pallasch

**O**n Halloween in 1994, 30-mile-an-hour winds whipped rain horizontally into people's faces. Umbrellas blew inside out. The Chicago Bears and Green Bay Packers struggled to play football at Soldier Field.

Nine-thousand feet above northwest Indiana, American Eagle Flight 4184 from Indianapolis circled, waiting to land at O'Hare International Airport. The winds were lighter up there, but twice the co-pilot warned the pilot that freezing drizzle was coating the wings with ice.

"Aw, [expletive]," the co-pilot said, the last sound on the cockpit voice recorder before a "loud crunching sound." All 68 passengers and crew died when the plane slammed into a Roselawn, Ind., cornfield at 450 miles an hour. The impact was so fierce the coroner found no more than a pound of remains for any one victim.

Three years later a jury had been chosen and opening arguments were set to begin in U.S. District Court Judge Ruben Castillo's courtroom in Chicago. The case was *In re Air Crash Disaster Near Roselawn, Ind.*, on Oct. 31, 1994, 95 C 4593.

But at the last minute, Chief Judge Marvin E. Aspen shuttled between rooms at the North Shore Doubletree Hotel in Skokie to broker a \$110-million settlement, averting a trial.

What a fascinating trial it would have been.

The attorneys were tops in their fields. For three years they had researched and prepared, assembling the latest technology and running their strategies past focus groups.

**Robert A. Clifford** of the **Clifford Law Offices** was lead plaintiff's counsel, representing 15 of the 28 families whose suits remained at the time of trial.

Anton R. Valukas of Jenner & Block represented AMR Corp. — parent of American Airlines; AMR Leasing Corp.; and AMR Eagle Inc., which owns Simmons Airlines, operator of American Eagle. American Eagle operates smaller, regional aircraft connecting with American's main routes.

Michael P. Connelly of Connelly & Schroeder represented Avions de Transport Regional (ATR), the plane's European manufacturer. The manufacturer's European ownership triggered the Foreign Sovereign Immunity Act, which brought the case to federal court.

In their opening arguments, **Clifford** and Connelly would have blamed American for the crash. The 29-year-old pilot was out of the cockpit on a five-minute bathroom break, socializing with the flight attendants while the 30-year-old co-pilot tried to warn him about the ice build-up, they would argue.

"Gettin' busy with the ladies back here... so if I don't make it up there within the next, say, 15-20 minutes, you know why," the

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recorder captured the pilot telling the co-pilot over the intercom. American Eagle paid the pilot \$55,000 a year, the co-pilot \$23,000 — same as a flight attendant, **Clifford** would have pointed out.

Then **Clifford** would join Valukas in arguing that the manufacturer was at fault. The "boot" on the wing that's supposed to prevent ice build-up was inadequate, the National Transportation Safety Board ruled. The Federal Aviation Administration failed to raise red flags before certifying the plane was safe, Valukas would stress.

"**Clifford** had the best situation in the world," Connelly said. "He had Valukas on his side to find out anything about the plane. He had me on his side to find out anything about American."

All the bells and whistles were ready to go. "We wanted to make this a [technology] showcase—the plaintiffs were entitled to that," **Clifford** said.

Depositions were videotaped. When **Clifford** would argue that American put

profits over safety, he would click on a video of American CEO Robert Crandall. Asked what he did to test ATR planes for icing problems, Crandall would tell jurors via video, "Well, I suspect nothing. We rely on the agency of oversight... the Federal Aviation Administration."

The plaintiffs' attorneys had videotaped biographies of the victims. All three sides created animated videos of the crash, synchronized with the tape of the voice recorder.

"When I saw **Bob Clifford's** video, I laughed because it was exactly the same as ours," Valukas said. "With the meteorologists, there was not a scintilla of information different. They were all identical. I could have examined my experts off their charts."

Judges Aspen and Castillo credited the attorneys with running a textbook case in terms of civility and trial preparation. The attorneys, in turn, praised Aspen, Castillo and opposing counsel for their professionalism. **Clifford's** and Valukas' behind-the-scenes workhorse partners—Kevin P. Durkin and Sidney I. Schenkier, respectively—earned kudos.

All three sides admired Castillo's holding to his early admonition that the case be tried or settled before the third anniversary of the crash. The settlement brought in \$1 million in fees for Connelly's firm; \$10 million to \$16 million for **Clifford's** firm; and an unknown sum for Valukas' firm. He wouldn't say.

Within two weeks of the crash—Nov. 13—the first case was filed in Cook County Circuit Court by Donald J. Nolan of The Law Offices of Donald J. Nolan, who ultimately filed three cases. More cases starting coming in, most of them in Cook County. In all, 16 law firms from seven states and Washington D.C., would file suits in numerous jurisdictions.

"Within a couple of weeks we got calls," Durkin said. At the time, **Clifford** and Durkin were part of Corboy Demetrio **Clifford**, a merger of powerhouse personal injury firms that started nine months before the crash but split three months later.

The crash preceded Congress' 1996 thirty-day "cooling off" period enacted to shield

families of disaster victims from attorney solicitations.

"I believe some firms in Chicago mailed to people; but we, never, ever called anyone to represent them," Durkin said, adding that at least four clients hired them because "you didn't send stuff to us."

## Scavenging for experts

The attorneys twice traveled to France together to depose ATR officials. They went to England and Sweden to interview victim's families. They tripped over each other trying to retain the country's top experts before the other sides could.

Each wanted to snare leading voices in meteorology, ice on planes, and "super-cool drizzle drops"—the weather phenomenon at the heart of this case.

One drizzle-drop expert courted by two sides was dropped by both when they found him too rambling, they said. Each side predictably claimed it won the sweepstakes for best experts.

"We had two experts signed up within four days," Connelly said. "Clifford's experts all took courses from our experts."

That drew a hearty laugh from Durkin, who explained how one of his experts might have "learned" from one of Connelly's.

Durkin hired Porter Perkins, 70, a former NASA consultant, who had been testing airplanes for icing effects since World War II.

"And part of their argument was going to be this aircraft-icing was an entirely new phenomenon," Durkin said.

Perkins agreed to testify for the plaintiffs after declining an offer from ATR.

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**"The people who have caused the harm know very much, and the families know very little and find out later," Clifford says.**

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"Within a few days, shortly after the accident, they called and wanted to retain me right away," Perkins said. "I told them I wasn't interested."

ATR sent Perkins a FedEx letter the next day, which he returned unopened, he said. Even if they never intended to use Perkins as a witness, all sides try to keep the top experts unavailable to the other sides.

"It's very common to try to tie up experts like that," Durkin said.

Perkins is known among his peers as "one of the fathers of aircraft icing science," Durkin said.

Perkins told Durkin that Connelly's expert meteorologist, Wayne Sand, was scheduled to give a seminar on aircraft icing conditions—including the Roselawn crash—in Reno, Nev., at the same conference where Perkins



**Robert A. Clifford**

would be speaking. Durkin joined the American Institute of Aeronautics and Astronautics and sat in on all three days of seminar, joining Perkins to listen to Sand.

"[Sand] is probably the foremost aviation icing expert in the country," Connelly said.

Durkin and Connelly debate which of these two aviation icing experts could teach the other something he didn't already know, but Durkin concluded by saying, "I was learning areas to cross-examine him on; and he was going to say the pilots were at fault, so..."

So...Durkin decided he'd be happy to let Sand testify unchallenged.

"It would have been a battle of experts," Valukas said, adding, "At least one of the experts the plaintiffs very much wanted to use was one we were using."

## Early settlers

On Dec. 5, Robert L. Alpert, a New York-based attorney for American's insurer, wrote to family members of the victims to express "sincere condolences," offer reimbursement for any funeral or travel expenses, and even to advance funds for other expenses.

"You may find yourself under pressure to sign a contingent fee retainer with an attorney whereby his fee is a percentage of the final award," Alpert wrote. "The rationale for such a percentage fee is that the lawyer risks getting no fee if there is no recovery. There is

no such risk in this case. There is nothing to be gained by a precipitous lawsuit."

**Clifford** and Durkin beg to differ.

"The ultimate result was triple the final offer made in 1996," Durkin said. Individual settlements are confidential, but **Clifford's** 15 cases settled on the eve of trial brought in \$64 million, an average of \$4.3 million each. The total of Nolan's three cases brought in "a little over \$12 million," he said.

The letter said American did not believe the airline "or its crew were in any way responsible for this accident."

About 35 of the 68 estates would settle at some point over the three years before the \$110-million settlement in September 1997.

## Waiting for the NTSB

As with any crash case, proceedings are put somewhat on hold while the National Transportation Safety Board investigates the cause of the crash.

"We were stalled for a long period of time with the NTSB—from Dec. 1 [1994] to July 1996," Durkin said.

The airline and the manufacturer participate in NTSB investigations. The plaintiffs' attorneys complain that gives those sides an advantage.

"The people who have caused the harm know very much, and the families know very little and find out later," **Clifford** says.

Valukas says the NTSB investigation is an above-board, professional process in which those who can help solve the puzzle of the crash's cause naturally are called on to participate.

"The NTSB appeared to be dedicated to actually seeking the truth," Valukas said. "All parties were compelled to disclose everything. It was a refreshing experience. Lawyers were not interested in tailoring evidence. It was a very truth-oriented process."

Not all the process was closed: The board held a public hearing in Indianapolis the week of Feb. 27, 1995.

Meanwhile, the plaintiffs' attorneys on their own researched past airplane-icing incidents.

The NTSB would find 13 incidents in which icing caused problems for the ATR 42, predecessor to the ATR 72 model that crashed in Roselawn.

The one that most interested the plaintiffs' attorneys was a 1987 crash near Como, Italy, that killed all 37 passengers and crew.

Connelly argued the 72 model was substantially different from the 42, saying the 72s reported no icing incidents since their debut six years ago.

But Castillo ultimately would rule that seven icing incidents involving the 42 were admissible—including Como.

ATR's United States counsel, Stephen C. Johnson of Lillick & Charles in San

Francisco, initially hired Michael Merlo of the Chicago firm of Merlo, Kanlfsky, Brinkmeier & Douglas Ltd. to represent ATR in this trial. Merlo bowed out soon thereafter, due to a conflict: His firm previously has represented American. Connelly took over in early 1995.

## Clifford assumes the lead

While Valukas and ATR's attorneys participated in the NTSB investigation, the plaintiffs' attorneys began dividing the labor.

"We broke it down an distributed responsibility among the plaintiffs' team," said James T. Crouse of Speiser, Krause, Madole & Lear in Rosslyn, Va. "Kevin Durkin and **Bob Clifford** were certainly the lead."

"We took the lead by the agreement of everyone," **Clifford** said. "We made the assumption that at the end of the day, we'd be the only ones left standing. We didn't have to rely on any other plaintiffs' attorneys. There was a lot of coattail riding in this case, and that's not a bad thing."

"We were the document depository; we were the central station," Durkin said. He rented an extra office a floor above him. There, paralegal Jennifer Gordon maintained spare copies of every document.

In February 1995, **Clifford's** firm split off from Corboy & Demetrio. Phillip H. Corboy and Thomas A. Demetrio agreed to let **Clifford** take primary responsibility for this case; Corboy and Demetrio took primary responsibility for air crashes in Pittsburgh and North Carolina. All three have worked on all the cases. Both sides assumed consulting roles in the others' cases.

## Globe-trotting

The plaintiffs' attorneys could not yet depose American or ATR officials, but their clients could talk about their loved ones.

Among the passengers on the plane were citizens of Canada, Great Britain, Sweden, Colombia, South Africa and South Korea.

Passengers also included American citizens who were General Motors employees on their way to O'Hare to catch flights to Germany. On the back of every international airline ticket it fine print: The Warsaw Convention limits to \$75,000 the damages available for an international crash, including domestic connecting flights.

"At least 10 passengers were in that category," Durkin says.

The limit applies "unless the airline is guilty of 'willful misconduct,'" Durkin said. He felt "up to the task" of proving that.

Some plaintiffs' attorneys worked on liability, others on damages.

"We started meeting with all the families, getting economists," Durkin said. "We had a

lot of corporate people who passed away. The first year was spent heavily on damages discovery."

Lawyers went off to Scotland and to Manchester, England. Durkin went to Sweden.

"One family [of two victims] lived way up near the Arctic Circle in Sweden," Durkin said. The victims, an elderly couple, had been visiting a daughter in Indianapolis.

Durkin brought his Swedish-American wife and their daughter; and they were warmly received by the victims' family, most of whom spoke excellent English.

"They were extremely educated people," Durkin said. "Even the youngsters in grade school had learned English."

## Show, don't tell

In many cases, after Durkin or one of the other attorneys visited and interviewed families, the firm would send professionals to videotape a segment about the victim.

In a personal injury case, **Clifford** finds it useful to show jurors a "day-in-the-life" video of the plaintiff living with the disability the defendant caused him or her.

"But in a death case, how do you do it?"

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**Clifford** asked rhetorically. The professional-quality videos featured interviews with spouses, children, parents and friends of the loved one. High school teachers talked about what good students they were; bosses talked about their budding careers. All videos climaxed in tearful accounts of hearing about the crash, hoping the loved one wasn't on the plane.

Every video was a tear-jerker.

"It helped us organize our thoughts" about what to present at the damages phase of the trial, **Clifford** said.

The videos were shown to focus groups, which gave the attorneys feedback about what might interest jurors.

"I want to show this guy was going to be the chairman of GM, and sometimes they want to hear more about the quality of the [spousal] relationship," **Clifford** says.

**Clifford** sends copies of tapes to opposing counsel, showing them what will be presented at trial, and invites them to send copies to the insurers.

"We certainly watch them all," said Sheila A Sundvall of Sidley & Austin, who coordinated defense on damage issues. "We have people from offices review them. It certainly

puts a human element into the process. But that human element also comes through when we are taking the depositions."

"The plaintiffs did a very effective job in letting us know as much as they could about the victims in this case and their families," Valukas grants.

Defense counsel scheduled depositions to coincide with a memorial service in Indiana for the victims; American flew relatives to the service, Sundvall said.

The lack of identifiable remains meant families could not have a standard burial near their homes.

## Venue wars

One of the first big fights was over where to hold the trial. Most of the suits were filed in Cook County Circuit Court Law Division. Others were filed in state courts in Texas, New York and Florida.

In addition to American and ATR, many of the suits named as a defendant Honeywell, Inc., which designed the automatic pilot system that disengaged shortly before the crash.

This year Richard C. Palmer of Wildman, Harrold, Allen & Dixon successfully removed Honeywell from the case after it became clear the autopilot functioned appropriately.

ATR is a joint venture between France's Aerospatiale and Italy's Allennia and is more than 51 percent owned by those two respective governments. ATR invoked the Foreign Sovereign Immunity Act by filing for removal to the federal courts governing each of the jurisdictions in which it had been sued.

That would ensure a federal bench trial instead of a state jury trial in which jurors might be swayed by nationalism.

The cases were forwarded to the Multi-District Litigation panel based in Washington. The panel had to decide whether to assign the cases to a federal judge in Chicago, as most of the plaintiff's attorneys sought, or to a federal judge in Hammond, Ind., as the defense sought logical place because that's where the plane crashed," Connelly said. "And it had some more conservative law in terms of availability of damages."

Federal courts use state laws in some aspects of determining damages.

And while the plaintiffs argued that Chicago made more sense because it was more easily accessible to the plaintiffs and others who would be coming to testify, Illinois' more liberal damage laws were appealing, too.

In wrongful death cases, Indiana allows no pre-impact terror damages; no damages for siblings or parents of adult unmarried victims. Illinois allows all that.

The MDL panel assigned the case to

Illinois, but Castillo ruled that the damage laws of the state each individual victim was from would govern the compensatory award for that victim's estate.

Neither Indiana nor Illinois allows punitive damages in wrongful death cases. However, Texas does; and American Airlines is based in Dallas. Castillo ruled for the plaintiffs in allowing Texas law to govern punitive damages in all the cases.

The Foreign Sovereign Immunity Act allowed ATR to have Castillo, rather than a jury, assess ATR's liability. The same proviso did not apply to American, a U.S. company. Castillo ruled he would seat a jury who would hear the case against both defendants but use the jury's finding on ATR's liability merely as an advisory opinion.

Following the liability trial, the same jury would hear a damages trial on four "exemplar" plaintiffs with different economic circumstances. The verdicts would be used as benchmarks for settling the remaining cases.

## Hardball

In late 1995 Castillo appointed former federal judge Nicholas J. Bua, now at Burke, Weaver & Prell, as a special master in an effort to settle cases.

"He has got to be known as the best person in the city at settling cases," Castillo said. Bua secured about 20 settlements, including one big one for \$15 million, he says.

"That's nowhere near half the cases," Bua said. "Usually we're able to do better than that."

Bua blames Alpert, who represented American's insurer and wrote the letter to victims' families, for the lack of settlements.

Alpert is president of the International Claims and Litigation Management Group, Inc., Garden City, N.Y. and Chapel Hill, N.C. He did not return repeated telephone calls.

"At that time, Bob Alpert took a really hard line," Bua said. "I told him from the beginning, 'You don't tell **Bob Clifford**, 'Your case is worth this much and I won't budge more than 5 or 10 percent.' He will beat your brains out.' And he did."

Alpert's hardball approach alienated **Clifford** and Durkin.

"Bob Alpert came to our clients and did his best to have them not retain counsel and did everything he could to keep this from reaching an amicable resolution," Durkin said. "He said, 'Here's our offer, and we will not pay you a penny more. Maybe, if you can convince me, it'll be 10 percent more.'"

Plaintiff's attorney William J. Harte of William J. Harte Ltd. obtained one of the larger settlements stemming from Bua's conferences. The amount is private. Harte's client, a partner at Andersen Consulting LLP,

"had fought to get on the plane to get home to take his children trick-or-treating."

Harte was satisfied with the process.

"That's a redundancy [to say] Bob Alpert takes a hard line," Harte said. "That's his job. He does it well. I know the widow and children in our case were treated fairly."

Solo practitioner Martin E. Klein reacts to Harte's comment with sarcasm.

"Great—he's doing his job for his client," Klein said. "But for poor Nick Bua—who comes for not a small price, I'm sure—the settlement conference was of questionable value as far as trying to have an early resolution of claims.

"We didn't feel that the representatives of the defendants were making it worthwhile to participate in those discussions. We went in there hoping for serious negotiations right off

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the bat. It was five or six months."

Klein started negotiations in January 1996. He settled in August after Alpert "substantially" raised the offer, he said.

At one point, Bua told Alpert he was going to quit because the low-ball offers were wasting everyone's time.

"If I had the sum that Tony Valukas had when he settled, we'd have settled much earlier," Bua said. "I have a tremendous amount of respect for Tony Valukas. Had he been in the case from the beginning, it would have settled much earlier."

The tone set in the settlement conferences made even less likely the chance that American and ATR might present a united front against the plaintiffs, Connelly said.

"In the settlement negotiations, the cases had been clouded up with a certain adversarial relationship. In the beginning of the case, an individual—not Tony—set the strategy. The plaintiffs might have seen a different defense of the case with Tony and I working together. At the end of the case, Tony was able to take control of the case. I wish to God we had been able to work together."

With settlement talks less fruitful than he'd like, Castillo emphasized his bottom line: Be ready for trial by September 1997.

"Setting a firm trial date is the tried-and-true method," Castillo said. "[September '97] was a line in the sand I drew as a challenge to myself. Every time I got to an anniversary of the crash, I kept thinking: We need to get to

an end-point. I tried to put myself in the shoes of somebody who lost somebody in the crash. I didn't want the relatives to suffer any longer than necessary."

## In the air

As part of the NTSB investigation, American Eagle and ATR were re-enacting the conditions of the crash over Edwards Air Force Base in California.

An ATR test pilot flew an ATR 72 high above the desert, following another plane spraying drizzle drops similar to those present above Roselawn, Valukas said.

"They sprayed the plane with some of the same conditions over Roselawn, and the anomaly occurred," Valukas said.

"It was the first time anyone had ever seen the phenomenon," Connelly said.

Each attorney interpreted the test results as a victory for his client. The wings iced up; but the experienced test pilot was able to compensate, Connelly said.

The test showed the "boot" designed to prevent ice build-up on the wing was clearly inadequate, Valukas said.

They're both right, the plaintiffs' attorneys said.

As a result of the investigation, ATR has changed the design of the wing to include a bigger boot, which should prevent future accidents. And American Eagle has expanded its training manual with a broader discussion of flying in icing conditions.

"There really is a lot that came out of the crash," Connelly said.

Crouse, the D.C. plaintiff's attorney, disagrees, saying the Federal Aviation Administration still only enforces minimum safety standards.

"The saddest thing about the Roselawn crash and the ensuing litigation is it showed how deficient the system is in designing aircraft, getting them certified and getting them operating," Crouse said. "Everyone should learn a big lesson from Roselawn. The tragedy is, I don't know if they have."

## The aileron

The focus of the Roselawn crash was a part of the wing called the aileron (AY'-leh-ron), which moves the plane up and down. When the wing iced up and the autopilot disengaged, the aileron made "a sudden and unexpected hinge moment reversal" that sent the plane into a roll from which it never recovered, the NTSB concluded.

Merlo—and then Connelly—could tell from early on that the NTSB investigation was not going their way. In the end, the report would largely exonerate the crew and blame ATR and, surprisingly, the FAA, for not catching the plane's inability to

handle ice.

"We got caught in a turf war between the NTSB and the FAA," Connelly said. "They totally ignored crew conduct that was inappropriate. You could see that by the way they excerpted the flight record. If you could have heard the whole transcript, you would have seen the attention of the crew was not on flying the aircraft. For the NTSB to have ignored that put us in a hole going into the trial."

Connelly and the plaintiffs' attorneys had to battle to get the entire cockpit voice recorder transcript admitted in evidence.

All the attorneys say they are bound by court order not to release the unedited version of the transcript, which apparently has quotes even more explicit than "Gettin' busy with the ladies back here..." amid rap music audible in the cockpit.

After reading a draft of the NTSB's final report, the Bureau Enquetes-Accidents (BEA) of the French government wrote to the NTSB with a dissenting report, blasting the NTSB report as "one-sided" and arguing the crew deserves more blame.

The NTSB report was released July 9, 1996, nearly two years after the crash. As ATR expected, it largely blamed ATR and the FAA. The plaintiffs were finally free to begin discovery.

## The depositions begin

When the NTSB report was released, "All hell broke loose," Clifford said. "It was non-stop 7 days a week. At some point, everyone in the office was working on this. Full-time we had five attorneys working on it."

Durkin hit milestones in putting together his case. One was getting the full recorder transcript. Another was having three former and current American Eagle pilots offer to testify about problems they had with icing on their planes. And another was convincing Castillo to let the plaintiffs depose American Airlines CEO Crandall.

Executives usually are protected from having to sit for depositions, but Clifford and Durkin argued that a major part of their argument would be American's push—from the top down—for profitability over safety.

"Crandall's testimony supported a view we had long held: he's a businessman. His approval came from a business perspective as opposed to a safety perspective. He's thinking of protecting the company and the stock-holders," Clifford said.

Clifford videotaped every deposition.

"This is the first time we've done every deposition on video," Clifford said. "In a federal case, you've got to do it. You don't have the compulsory process to bring in witnesses."

Some of those witnesses were in Europe. And Clifford doesn't like to use fair-haired actors to read a transcript of a deposition.

"Sometimes you want to show the person giving the company [line] is a nasty creep," Clifford says.

Crandall gave Durkin many of the answers he and Clifford were looking for.

"Ultimately, I am responsible for anything that happens at AMR," Crandall said.

"What was done by AMR, American Airlines, or Simmons to investigate the problems of ATR 42 or 72 operating in icing conditions?" Durkin asked Crandall.

"Well, I suspect, nothing," Crandall answered. "We rely on the agency of oversight...the Federal Aviation Administration."

Durkin planned to admit into evidence a statement from the FAA that their standards were "Minimum safety standards."

Valukas watched the deposition and felt Crandall acquitted himself well. Valukas' message to the jury would have been:

"The individual executives at Simmons and Eagle, who reviewed all prior icing incidents, were themselves pilots who were flying that aircraft and were responsible for overseeing pilots flying those aircraft; and they had all concluded there were no safety issues involving that aircraft; and they felt safe having their people flying those aircraft. These men never would have put fellow pilots at risk if they would have felt there was a safety issue involved. That was our strategy. And it would have worked."

## Toulouse—the trek

Deposing Connelly's clients would prove a bit more tricky.

"ATR, as a foreign sovereign, is beyond the subpoena power of our court," Clifford said.

"They can come over here, establish a corporation, a market; but because they are beyond the power of the court, they can pick and choose which employees will be available for depositions," Crouse said. "They can make us come over there. When it comes to accounting for what they did, they can hide their engineers, the chiefs of their organizations, in France. Jean Rech, their chief engineer and the designer of the aircraft, who was indicted by an Italian tribunal for a crash in Italy—we never got to take his deposition. Claude Bechet, their head of safety—we never got to take his deposition."

Durkin, Crouse, Connelly and other lawyers involved in the case went to Paris and to ATR's headquarters in the southern French city of Toulouse, where ATR has 27,000 employees, to conduct depositions.

"I flew back and forth to Paris three times," Connelly said. "We were there for Bastille Day—the French 4th of July. We

were staying on the square. We got no sleep. In Toulouse, those were 12-to-15-hour days. We weren't goofing off."

Meanwhile, each of the three sides composed their animated versions of the crash. Valukas hired Forensic Technologies, Intl.; Connelly hired Engineering Animation Inc.; and Clifford hired Z-Axis. JuriLink composed Clifford's videos of victims' families.

## The eve of trial

By this past summer, no global settlement was in sight; and it became clear Castillo wasn't budging on the trial date.

"It's an amazing thing to me Castillo held us to that schedule," Connelly said. "Castillo did a great job. He defused a few really ugly situations. Nobody ever got sanctioned. He was able to put people back on track, make them act like adults."

Valukas credits Castillo with ruling quickly on motions.

"He wanted to make sure we were working on this full-time," Clifford said.

And they were.

"I went the last 2½ months without a day off," Connelly said.

Castillo limited ATR and American to six experts each; the plaintiffs had eight. The order of cross-examination in this tri-partite trial remained unclear.

Jury selection began Sept. 15—with copies of the NTSB report adorning the desks of both defendants' and plaintiff's counsels—and it soon became clear that jurors remembered the weather on Halloween 1994.

"Everybody remembered the football game that night—it was terrible weather," Valukas said.

Thursday, the day before opening arguments were set, experts were flying into town; and Clifford was preparing to try his opening argument on a focus group.

"I reminded the parties that they should consider once again the issue of settlement," Castillo said.

The parties were willing to give it one last shot. They asked Castillo if he would serve as mediator. He declined, saying he wanted to remain impartial.

They then suggested Aspen.

## Shuttle diplomacy

"The fact that Tony and Bob know me well and we have been together on social occasions, I think, is the reason they wanted me to try to settle this case," Judge Aspen said. Schenikier was a former law clerk for Aspen.

Aspen's daughter had just started working at Jenner & Block but all sides agreed they would not consider that a conflict.

"We met in my chambers," Aspen said. "We worked most of the afternoon on Thursday. I had to run out to take my mother to the hospital at 6 p.m., and I couldn't get back into the Loop. They rented three suites in [The North Shore Doubletree Hotel in Skokie], where we worked fairly late that evening.

"We settled about six out of the 30-odd cases. It became clear at that time at the pace we were going, it would not be settled by [the next morning.] I talked to Judge Castillo and asked him to hold off till noontime."

Negotiations resumed Friday morning in the Dirksen Federal Building.

"We had as many as 10 plaintiffs' lawyers," Aspen said. "We had to make sure we had some negotiations going between the two defendants because the manufacturer was going to blame the carrier, and the carrier was going to blame the manufacturer.

"At the same time, we had still a third satellite settlement track going on with the insurers. American Airlines had a British insurer. The manufacturer has a French carrier. We had to get the insurers on board. Where the insurers were interested solely in the bottom-line dollar figure, the manufacturer and the carrier were concerned about their public corporate image."

Aspen saw enough progress in the talks that he called Castillo and asked him to move opening arguments back on Monday.

"We worked all day Saturday in chambers. We accomplished a lot, but we weren't quite there yet." Aspen said. Aspen was meeting

and talking with individual plaintiffs. Some were less concerned with money than with getting an apology from American and making sure this accident would not be repeated. Valukas agreed to issue an apology. Aspen kept Castillo apprised of progress.

"It's very humbling for me to be receiving telephone calls from the chief judge at home on a Sunday at 8:30 a.m., asking me if it would be OK for him to call me after 9 o'clock at night," Castillo said. "As far as I was concerned, he was working for me on

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### Clifford made a mini-opening argument for the families, showing many of the videos he had made about their loved ones.

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my case—he could call me whatever time of day he wanted."

By Sunday night, all but one case was settled. Opening argument still was set for 2 p.m. the next day. When lawyer Harry Wilson of Wilson, Kehoe, & Winningham in Indianapolis got to town Monday morning, Aspen met with him and his client.

"I talked to her alone and to her attorney alone as her attorney asked me to," Aspen said. "She's a wonderful woman, I spent a lot of time talking to her about what her concerns were—that the negligence was acknowledged and that any settlements would really have the effect of putting defen-

dants in a posture of making sure this type of negligence didn't occur again.

"Finally, the three of us agreed on a number that would be acceptable to her. I talked to Valukas, and he made some calls to Europe. It settled less than an hour before time for opening statements."

Three cases involving six estates were not part of the final settlement in Chicago and likely will proceed to trial or settlement in New York and Florida, Schenkier said. The defendants stipulated to liability.

### The bottom line

The total settlement was \$110 million, but terms of individual settlements remain confidential. As for how big a share ATR and American will each contribute, Connelly says, "If it wasn't 50-50, it was close."

"When a judge can settle a case, and both sides feel they can still work with each other, I think that is really much more satisfying than sitting through and trying a perfect trial," Aspen said. "And it really could not have been accomplished without the very fine leadership of Mr. Valukas and **Mr. Clifford.**"

Many of the plaintiffs' families had gathered in court. Valukas issued an apology on behalf of American. **Clifford** made a mini-opening argument for the families, showing many of the videos he had made about their loved ones.

And a permanent memorial has been erected at the site of the crash. ★

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# The New York Times

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September 23, 1997

CHICAGO, Sept. 22 (AP) — Families of some of the 68 people killed three years ago when an American Eagle flight slammed into an Indiana farm field settled their lawsuits today with the airline and manufacturers of the airplane, collecting \$110 million.

"We are terribly sorry that this happened," a lawyer for American Airlines, Anton Valukas, said as the settlement was announced. "We can never compensate you for the loss that you have suffered."

The settlement covers the deaths of 27 people. An additional two lawsuits over the deaths of six people are still in negotiations over the amount of monetary awards. Settlements in the death of 35 other passengers already have been reached.

"It was very fair," said Kim Collins, 36, of Pittsburgh. Her sister, Sandi Modaff, was a flight attendant on the plane. "This is a sad day. It brought all that back."

American Eagle Flight 4184, bound from Indianapolis to O'Hare

International Airport, was in a holding pattern in a freezing rain the evening of Oct. 31, 1994, when it suddenly rolled and plunged to the ground near Roselawn, Indiana. All aboard the French-built ATR-72 turboprop died.

The crash led the National Transportation Safety Board in 1996 to urge tighter regulations on flights by commuter aircraft in icing conditions.

The safety board said the flight's crew was not responsible.

It issued a report faulting French aviation authorities and the makers of the aircraft, and said the Federal Aviation Administration had failed to exert proper authority over the aircraft's maker.

The board concluded that ATR had failed to adequately report previous problems encountered by its planes in icy conditions.

It also faulted the French Directorate General for Civil Aviation for failing to oversee the manufacturer and to inform the F.A.A. about the airworthiness of the ATR planes in icy conditions.



## Flight 4184 crash case settled for \$110 million

### Some families relieved, others insist ATR planes still unsafe

By ROBERT C. HERGUTH  
DAILY HERALD STAFF WRITER

Families were torn apart when an American Eagle ATR-72 turboprop bound for O'Hare International Airport crashed into an Indiana cornfield three years ago, killing all 68 people aboard.

On Monday, many relatives of those victims came together in a Chicago courtroom, a few with arms around each other, as an "unprecedented" \$110 million settlement was announced between the families and those they claimed were liable for the accident—the airline and the aircraft maker.

Though some family members welcomed the settlement—and an emotional apology from the attorneys representing American and the plane manufacturer—others were still bitter and continued to question the safety of ATRs.

"Right now I don't feel there is justice in this," said Terri Severin, whose sister Patricia Henry and 4-year-old nephew Patrick of Glenview were killed in the Oct. 31, 1994 crash of Flight 4184.

"A human life cannot be replaced," the Glenview resident said. "But it's time for us to turn and go on with our lives."

Jennifer Stansberry agreed. Her 27-year-old brother, Brad Stansberry of Indiana, also was killed in the crash.

"I'm happy for the families, that they can go home and continue their lives," Jennifer Stansberry, also of Indiana, said. "I'm sad for the public because they will never know the whole truth."

The truth, according to plaintiff attorney **Robert Clifford** of Inverness, was that American Airlines and the French plane manufacturers knew ATRs had "uncommanded roll problems in icing conditions" but chose to do little about it.

The National Transportation Safety Board has said ice on wings, caused by freezing rain, contributed to the crash.

A co-pilot noticed the icing prior to the accident and mentioned it twice before the plane rolled violently and then plunged toward the ground, **Clifford** said. Ice formed

on top of the right wing behind the de-icing "boot," which contains warm air that's supposed to keep ice from forming, he said.

"There were seven incidents before this," he said, including a crash in Italy were no one survived.

He said the manufacturers did not notify the public of the problems, and kept quiet a study on the icing. And, he said, the airline did not adequately train pilots to deal with it.

"There could have been better training, there could have been better design and more resources committed to do a design or redesign of this craft after some of the earlier incidents," said Robert E. Bennett, another attorney representing family members.

**Clifford** said Mary Schiavo—the former inspector general for the U.S. Department of Transportation who has been outspoken over the need for increased aviation safety—had been tapped to testify. Also, an animated re-enactment of the crash was planned. And the cockpit voice recorder was to have been played for jurors, who were dismissed from duty before hearing any testimony.

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*The truth, according to plaintiff attorney **Robert Clifford** of Inverness, was that American Airlines and the French plane manufacturers knew ATRs had "uncommanded roll problems in icing conditions" but chose to do little about it.*

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The settlement, worked on over the past week with the help of U.S. District Court Chief Judge Marvin E. Aspen, avoids what likely would have been an emotional and lengthy trial, which was set to start Monday after several delays.

Details of exactly how much each family would receive or how much the airline and aircraft maker each would have to pay were not disclosed.

U.S. District Court Judge Ruben Castillo, who was presiding over the matter, said he recognized the emotional aspect of the case, adding, "I believe this represents the best outcome for this case."

In a statement directed toward family

members of victims, ATR attorney Michael Connelly apologized for the crash, but blamed it on a "weather phenomenon" that was "very rarely encountered, very rarely known."

And, he told the crowded federal courtroom, that good has come out of the accident. It sparked a massive "international" research effort aimed at better predicting such weather events and avoiding such disasters in the future, he said.

There were changes in the wake of the crash. New procedures were put into place and larger boots were installed on ATRs.

But some believe the changes are too little too late, and a few family members were taken aback by Connelly's remarks.

Former U.S. Attorney Anton Valukas, who is representing American in the case, also apologized, saying, "We are terribly sorry this happened. Terribly sorry. We can never compensate you for the loss you have suffered. I am sorry this has taken so long to get to this resolution."

Naperville resident Pat Hansen, whose brother Frank Sheridan Jr. died in the crash, said "That's what I wanted to hear. That's what I need to hear."

Some family members, however, remained angry over the way they were treated by American in the aftermath of the crash. Some unidentified body parts, for instance, were initially buried without family input, and there were other charges of insensitivity.

American has agreed to work on such issues.

The settlement effectively ends 26 lawsuits covering 27 victims. There are three suits remaining, covering six victims, but the liability issue will not be involved. They might be wrapped up in coming weeks, officials said.

A number of other suits filed on behalf of the 64 passengers and four crew members killed have been settled.

Among those killed was Mount Prospect resident Gino De Marco, whose wife was too distraught to speak publicly Monday. Also killed was Barrington resident Ken Spencer, whose wife has since moved to New England and, through her attorney, expressed "relief" at the closure of the case.

Severin said she has heard from pilots that there are still serious concerns about the safety of ATRs. But, when asked whether he thought they were safe, **Clifford** responded: "I would fly in that plane. I flew in one 30 days ago to get ready for trial."

## VERDICTS AND SETTLEMENTS

CASE TYPE: *wrongful death*

CASE: *In re Air Crash Disaster near Roselawn, Indiana, 95 C 4593, MDL 1070 (N.D. Ill.)*

PLAINTIFFS' ATTORNEYS: **Robert A. Clifford** and **Kevin P. Durkin**, of Chicago's **Clifford Law Offices**; **Thomas A. Demetrio**, of Chicago's **Corboy & Demetrio P.C.**; **James T. Crouse** and **Gerar R. Lear**, of the **Rossllyn, Va., office**, and **Kenneth P. Nolan**, of the **New York office**, of **Rossllyn's Speiser, Krause, Madole & Lear**; **James Kreindler**, of **New York's Kreindler & Kreindler**; **Donald Nolan**, of Chicago's **Law Offices of Donald Nolan**; **William Maready**, of **Winston-Salem, N.C.'s Maready, Comerford & Britt**; **Harry Wilson**, of **Whinningham, Ind.'s Wilson & Kehoe**; and **Michael Slack**, of **Austin, Texas's Slack & Davis**

DEFENSE ATTORNEYS: **Anton Valukas** and **Sidney Scheinkier**, of Chicago's **Jenner & Block**; and **Michael Connelly**, of Chicago's **Connelly & Schroeder**

SETTLEMENT AMOUNT: *\$108 million*

AN AVIONS DE TRANSPORT Regional turboprop airplane was flying from Indianapolis International Airport to Chicago Oct. 31, 1994, when ice on the aircraft's wings caused the plane's autopilot to disengage and the plane lurched, rolled over and plunged to the ground near Roselawn, Ind., said plaintiffs' counsel Kevin P. Durkin. All 64 passengers and four crew members were killed.

The families and estates of the victims sued the makers of the aircraft, Avions de Transport Regional G.I.E. and Aerospatiale Soci t  National Industrielle S.A., charging that the turboprop was defectively designed with a propensity to crash in icy conditions.

The plaintiffs also sued AMR Corp. and its divisions, AMR Eagle Inc. and Simmons Airlines, owners and operators of the aircraft, charging negligence for operating the ATR turboprop in cold weather.

The claims of 27 families settled Sept. 22. The defendants agreed to pay a total of \$108 million to the plaintiffs. How much each family will receive has yet to be determined, said defence counsel Michael Connelly. The percentage owed by each group of defendants has also not been set, he added.

September 23, 1997

## Indiana air crash suit ends in accord; 27 victims' families to get public apology, \$110 million award

By **Terry Wilson**  
and **John Schmeltzer**  
Tribune Staff Writers

A three-year quest for a public accounting in the crash of American Eagle Flight 4184 ended abruptly Monday, when a federal judge announced a \$110 million settlement for the relatives of 27 people killed when their turboprop plane slammed into an Indiana farm field.

The settlement ended efforts to force the plane's manufacturer, the French and Italian consortium Avions de Transport Regional, to admit the design of its rubber de-icing boot was insufficient and that pilot manuals failed to adequately explain the danger.

More than a dozen family members has gathered in the courtroom of U.S. District Judge Ruben Castillo, where lawyers were about to begin opening statements before a jury.

But intensive mediation efforts spearheaded by Chief Judge Marvin Aspen, under way since last week, helped broker the settlement.

"We are terribly sorry this happened. We can never compensate you for the losses you suffered. I'm sorry it took so long," said an emotional Anton Valukas, who represented American Airlines, the parent company of American Eagle.

Sixty-eight people died on Oct. 31, 1994, when an American Eagle ATR-72 turboprop suddenly rolled into a nose dive and crashed into the ground near Roselawn, Ind., its wings encrusted in ice.

The crash prompted changes in the aircraft's design, pilot guidelines and, most recently, a decision by American to begin replacing its turboprops at O'Hare International Airport with jet aircraft beginning next year.

October 1997



## \$110M Settlement for Air Crash Victims

TWENTY-SEVEN families with members who died in an American Eagle plane crash three years ago have settled with the defendants shortly before trial. *In re Air Crash Disaster Near Roselawn, Ind.*, on Oct. 31, 1994, MDL No. 1070 (N.D. Ill. Sept. 22). The plaintiffs had agreed to remain as a group until liability and damages issues were resolved—and their strategy worked. The defendants, including American Airlines Inc., Simmons Airlines Inc., American Eagle and airplane manufacturer Avions de Transport Regional, G.I.E., agreed to a settlement of roughly \$110 million.

"Fate thrust these families together on Halloween night in 1994 and together they remained bonded in seeing each other through this terrible ordeal," said plaintiffs' attorney **Robert Clifford** of the **Clifford Law Offices** in Chicago, who led the plaintiffs' legal team, along with

**Thomas Demetrio** of Chicago's **Corboy & Demetrio**.

According to the plaintiffs' attorneys, Flight 4184 crashed after flying in a holding pattern for almost 40 minutes in a flight scheduled to go from Indianapolis to Chicago. Ice built up on the wings of the aircraft, and the plane eventually rolled over and crashed. All 68 people aboard the flight died.

The defendants' handling of notifications of family members about the crash had been criticized, with some people reportedly receiving the tragic news on the answering machines. The plaintiffs' lawyers are urging the federal government to mandate changes.

**Anton Valukas** of Chicago's **Jenner & Block** was lead counsel for the airline defendants. **Michael Connelly** of **Connelly & Schroeder** represented the plane manufacturer.

"I'm happy it's over," said Jennifer Stansberry, of Anderson, Ind., whose brother Brad, 27, was killed in the crash and whose family settled its lawsuit last January.

"I'm glad for the families. But I'm sad for the public because they will never know the truth."

Monday's settlement ended litigation by all of the victims' families except for six. Those cases, virtually settled but with damage amounts still undetermined, are expected to be resolved soon, attorneys said.

The settlement brought some measure of closure for the relatives of the people who died in the crash of American Eagle Flight 4184.

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### Plaintiffs were ready to argue the plane's maker was to blame due to faulty design of the de-icing boot.

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The apology by Valukas "went a long way with some of these families to heal some wounds," said **Robert A. Clifford**, the lead attorney for the plaintiffs. "It was balm for some very sore spots."

The \$110 million settlement, which covered 27 of those killed, was slightly above average for this type of settlement.

Most cases are settled for \$1million to \$3 million per fatality.

On average in this case, the families received \$4.07 million, to be paid by American Airlines, Simmons Airlines, American Eagle and Avions de Transport Regional G.I.E. (ATR), the French manufacturer of the aircraft.

"The settlement is not that far off, and it gets the case behind them, which is exactly what American would like," said Tom Carroll, an airline analyst with Chicago-based Duff & Phelps Credit Rating.

Said Clifford: "I don't believe [American Airlines] was intimidated by anything other than the knowledge that this accident occurred under circumstances where it should not have occurred.

"We were prepared to offer expert testimony that this plane was defectively designed, that the plane has performance characteristics that the manufacturer did not sufficiently tell the operators about and we were prepared to show that the operators did not adequately train their pilots to know what they needed to know."

Valukas offered a different motivation. "What we have here today is something that gives some sense of closure to family members," he said. "This was not anything about fright."

Since the crash of Flight 4184, the rubber de-icing boots, which dislodge ice from the wing, have been enlarged on the ATR-72 to make it harder for ice that cannot be removed to form, **Clifford** said.

The manufacturer also has become more explicit in its operation manuals to give pilots better instruction about how to fly the plane. And airline operators are taking steps to better train pilots, so they know about the performance characteristics of the aircraft in unusual conditions, **Clifford** said.

The Federal Aviation Administration also is considering more stringent guidelines for ensuring that aircraft are better equipped to fly in freezing rain.

Another member of the team of plaintiffs' lawyers contended that the French-Italian consortium was aware of the plane's dangerous characteristics.

William Maready, a Winston-Salem, N.C., lawyer, said another plane has suffered the same fate seven years before Flight 4184.

"The Italians [investigating the accident] recommended they increase the boot size on the wing," Maready said. "[The manufacturer] didn't do anything. There were several warnings leading up to Roselawn."

**Clifford** said much of the blame can be traced to a breakdown in information sharing between the manufacturer of the aircraft and the operator.

Although a jury did not see or hear the evidence, **Clifford** said he did something Monday he had never done in the past.

With the survivors' families as spectators, he gave his opening statement with all the information the plaintiffs' attorneys had compiled so they could know every detail of what led to the crash.

"They listened with an intensity level that I haven't seen in a long time," **Clifford** said. "They heard every single word, phrase and detail."

For family members, Monday's settlement allows for a new beginning.

"It's time for us to go on with our lives. I'm happy this is bringing this piece to an end," said Terri Severin, 21, whose sister Patricia Henry, 37, and nephew, Patrick Henry, 4, died in the crash.

*Tribune reporter Matt O'Connor contributed to this report.*

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# Chicago Daily Law Bulletin

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## \$110 million accord told in American Eagle plane crash

By M.A. Stapleton  
Law Bulletin staff writer

Families of 27 people killed three years ago when an American Eagle flight slammed into an Indiana farm field settled their lawsuits Monday with the airline and manufacturers of the airplane for approximately \$110 million.

"We are terribly sorry that this happened," American Airlines attorney Anton Valukas of Jenner & Block said as the settlement was announced in the courtroom. "We can never compensate you for the losses that you have suffered."

In an unusual move, the plaintiffs in this case pledged to stay together as a bloc until all remaining liability and damages claims were settled. **Robert A. Clifford** of the **Clifford Law Offices** and Thomas A. Demetrio of Corboy & Demetrio headed the team of plaintiff lawyers.

**Clifford** said he was "very pleased" with the terms of the settlement. "This is a home run for the people."

Under the terms of the agreement, exact amounts for individual plaintiffs are confidential.

The settlement covers the deaths of 27

people of the 68 on board. An additional two lawsuits over the deaths of six people are still in negotiations over the amount of monetary awards.

The families of the remaining 35 victims agreed to damages-only trials; court-ordered settlement discussions are to begin within 30 days, **Clifford** said.

The settlement was reached just one week after the trial had started in federal court here before U.S. District Judge Ruben Castillo. Chief U.S. District Judge Marvin E. Aspen assisted in the round-the-clock settlement discussions, which were initiated by the

defendants and began on Thursday, **Clifford** said.

Castillo announced the settlement agreement in court Monday at about noon, shortly before opening arguments were slated to begin. The jury was selected last week.

Defendants include American Airlines, Simmons Airlines, American Eagle and Avions de Transport Regional G.I.E. (ATR), the French manufacturer of the aircraft.

Lawyers for the defendants have denied liability in the accident.

"It was very fair," Kim Collins, 36, of Pittsburgh said of the settlement. Her sister, Sandi Modaff, was a flight attendant on the plane. "This is a sad day. It brought all that back."

American Eagle Flight 4184, bound from

Indianapolis to O'Hare International Airport, was in a holding pattern in a freezing rain the evening of Oct. 31, 1994, when it suddenly rolled and plunged to the ground near Roselawn, Indiana. All 68 people aboard the French-built ATR-72 turboprop died.

The crash led the National Transportation Safety Board in 1996 to urge tighter regulations on flights by commuter aircraft in icing conditions.

The NTSB said the flights crew was not responsible.

It issued a report blaming French aviation authorities and the makers of the aircraft, and said the Federal Aviation Administration failed to exert proper authority over the aircraft's maker.

The board concluded that ATR failed to

adequately report previous problems encountered by its planes in icy conditions.

It also blamed the French Directorate General For Civil Aviation for failing to oversee the manufacturer and to inform the FAA about the airworthiness of the ATR planes in icy conditions as specified by international agreements.

The plaintiffs' legal team also included Kevin Durkin, a partner at the **Clifford Law Offices**; James Crouse of Speiser, Krause, Madole & Lear, and Chicago sole practitioner Donald J. Nolan.

The case is *In re Air Crash Disaster Near Roselawn, Ind.*, on Oct. 31, 1994, No. 95 C 4593.

— The Associated Press contributed.

# Chicago Sun-Times

September 23, 1997

## Airline settles crash suit

BY MICHAEL GILLIS  
FEDERAL COURT REPORTER

A trial over the fatal 1994 crash of an American Eagle flight in Roselawn, Ind., was averted at the last minute Monday when the airline and aircraft maker agreed to pay \$110 million to the families of 27 victims.

The settlement announcement—which came after a jury had been picked for the case—featured an unusual courtroom apology from lawyers for the defendants.

"We are terribly sorry this happened, terribly sorry," Anton Valukas, the former U.S. attorney who was representing the airline in the case, said to relatives in the packed gallery. "We can never compensate you for the losses you suffered."

Sixty-eight people were killed when the ATR-72 from Indianapolis to Chicago plunged into an Indiana cornfield. The National Transportation Safety Board concluded the French-made plane, which was in a holding pattern for 40 minutes, had developed ice on top of its wings, causing it to roll out of control.

The NTSB faulted the manufacturer and French aviation authorities for failing to adequately report the plane's previous icing problems. French officials, however, strongly disagreed with the American report.

Lawyers for the defendants denied all liability in the accident.

Settlements were previously reached in 35 other deaths from the crash. Damages remain unsettled in two lawsuits arising from six crash deaths.

Some family members said they had mixed feelings about the settlement, which saves them from going through an emotional trial but eliminates their chance to highlight their ongoing doubts about the plane's safety.

"Right now, I don't feel there is justice in this. A human life cannot be replaced," said Terri Severin of Glenview, who lost her sister and nephew in the crash. "It's time for us to turn and go on with our lives."

Valukas said he had no doubt the plane was safe.

"Without even a question," Valukas said. "This plane has undergone more safety testing than any other aircraft now flying. There is not even an issue with this aircraft."

**Robert Clifford**, the main attorney for the families, agreed the plane now is safe. He said the manufacturer changed the design of the plane to block the buildup of ice on the wings. And pilots are being better trained about flying the plane in unusual conditions, he said.

Research prompted by the crash has shown how to cope with the problem of freezing drizzle that can lead to icing, said Michael Connelly, who represented the manufacturers and also apologized to the families.

The agreement was reached after a weekend of negotiations presided over by U.S. District Chief Judge Marvin Aspen, who at one point summoned lawyers to a Skokie hotel for a negotiating session, lawyers said.



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