

## From the Desk of Robert Jensen

In June of this year, I asked for your help with establishing standards for emergency preparedness and response. Since then, and working with our association partners, we have started speaking with different government and trade groups about this important issue. Kenyon has formally requested meetings with various European Union representatives to provide specific examples of how a lack of standards has hurt the industry and more importantly, made it harder for families following a loss.

Kenyon is also entering into new partnerships with regional associations who have expressed an interest in establishing standards and training to those standards. Establishing standards is one step; training is another. On that front, Kenyon has met with IATA and proposed the establishment of a crisis response manager's accredited certification training program.

The program we are discussing would provide for distance and resident programs covering 8 key areas of airline crisis management: telephone inquiry centers, family assistance, human remains identification and repatriation, personal effects, crisis communications, investigations, hull recovery and site restoration, and claims settlement.

For many professional crisis managers, the steps Kenyon is taking are all welcome; together with your continued support, we will continue to make progress in this vital area and help change the way the industry does business.

## Kenyon Deploys to Madrid

Kenyon recently deployed a team to assist Spanair in the aftermath of JK 5022 which crashed on takeoff in Madrid on 20 August 2008. Kenyon provided advice and consultation, crisis communications, personal effects and repatriation support. Early on, local government agencies took responsibility for much of the recovery. They recovered the accident site, conducted all mortuary operations, coordinated the repatriation of Spanish citizens and managed most of the personal effects process. Kenyon repatriated twelve non-Spanish individuals. Kenyon was given the crew personal effects after it was associated by the Guardia Civil, local police, and allowed to clean and package the items. Additionally if a family wanted to package and deliver their loved ones' belongings to their hotel or home Kenyon did so.

Only a handful of families chose an option that allowed Kenyon to take their loved ones' belongings back to Bracknell for processing. The entire team performed well, as always, helping the families Kenyon was allowed to help and assisting Spanair.

Kenyon has put two offices into Spain to assist Spanair with the long term care to families: one in Madrid, and one in Las Palmas. A full time Kenyon employee, Robert Rowntree, is the project coordinator working directly with Spanair and several vendors for offices and personnel. Local nationals are being hired to support the offices.

## Dnipropetrovsk [d'njepetrovsk]

Don't have a clue what this tongue breaker stands for?

No need to worry, although some of the Europeans among the readership of this newsletter might know what it is: Dnipropetrovsk is an industrial city located approximately 400km south of the Ukrainian capital Kiev with a population of approximately 1.2 million people.

Very few airlines operate to Dnipropetrovsk (DNK). For Austrian Airlines, it's an important destination in a developing market that perfectly fits into our 'Focus Ease' concept. And it's not the only destination with an exotic name, located far away from infrastructure and procedures Europeans and Americans are used to. Cities like DNK, Nishnij-Nowgorod or Charkiw are booming and in 2012 Poland and the Ukraine will host the next European Football Championship with three international games that will be played in DNK. By then a wider number of people will know about it.

I also strongly believe that none of us really wishes to handle an accident and work through the difficult tasks and situations it involves. Although the people we met were friendly, accommodating, helpful and open-minded, none of us wants to experience the additional burden of the local 'circumstances' at such remote places: very limited infrastructure, strange surroundings, authorities that may have never thought of possible participation and involvement of private companies such as an airline or their service providers. In addition, authorities and partners that do not know each other and have no idea about the role and responsibilities an airline and, on their behalf, a service provider has in the aftermath of an aviation disaster, tend to protect and hide themselves behind laws and rules. All of this can lead to misunderstanding and additional suffering for the affected people, especially for the loved ones that are left behind.

Robert Jensen, CEO & President of Kenyon therefore approached me with the idea of visiting a few of these far-flung destinations. He had a number of cities on his wish-list and I additionally proposed some others to him. Like many readers of this newsletter, he hadn't heard about DNK before (I still have a good laugh when remember Bob trying to pronounce it correctly...). Supported by our local Station and Sales Managers we arranged a round trip through three different cities, in three different countries within one week in March this year. We had the chance to talk to quite a number of local authority and airport representatives in Damascus/Syria, Bakku/Georgia and Dnipropetrovsk/Ukraine.

Robert Jensen, accompanied by Dale Eliason of Kenyon, and myself had a demanding but very intensive week. It was interesting to see the different reactions of authority representatives. Some of them were skeptical at the beginning; others were open and welcomed anything offered by Kenyon or the airline. What people at all places had in common was their friendliness and respect. What they now also have in common is a very good understanding that neither Kenyon nor Austrian Airlines will try to take over what is clearly within their responsibility or 'teach' them how to do their job.

I am confident that our visit at these stations and the discussion we had with different parties clearly showed how important it is to trust each other and to cooperate as close as possible in an emergency situation. For the welfare of our guests and employees as well as for their families and friends.

I was invited by one airport authority to return and continue our talks. I'll do so in September and include the Austrian station staff in our next emergency drill in October. Are you guessing now which station that will be? Yes, it'll be Dnipropetrovsk.

## Kenyon Sponsors AFRAA workshop in Nairobi, Kenya

On July 14 and 15th, 2008 Kenyon presented ways for airline to be more incident prepared at an African Airlines Association (AFRAA) workshop in Nairobi. The 2-day workshop proved to be a success with the more than 50 participants representing airlines, airports, association members and the media.

Kenyon CEO and president, Robert A. Jensen, and AFRAA Secretary General, Mr. Christian E. Folly-Kossi, reiterated their desire to help the AFRAA members become more incident prepared and aware of the challenges that members face should an accident happen. Because of strong and supportive delegate feedback as well as positive media coverage, Kenyon and AFRAA are developing a strong partnership to help change the image of emergency response recovery throughout the African region.

Following the AFRAA/Kenyon workshop, Jensen and other Kenyon associates continued their travels through Africa

visiting a number of African airlines to discuss in detail all areas surrounding emergency response and crisis preparedness. These meetings generated significant demand for individual meetings from a number of African airlines. At the conclusion of the trip, Kenyon provided a workshop for a number of domestic carriers from South Africa followed by a more detailed presentation on victim identification and incident support that was attended by emergency services and third party professionals from South Africa. The workshop was valuable to the participants because they understood that integration of emergency services, airport response and airline response is vital for successful incident recovery.

## Liability Of Directors And Officers For Aviation Accidents By Sean Gates of Gates and Partners

The consequences of any major aviation accident are severe for all involved. Gates and Partners' role following such an incident is to work closely with the airline in order to ensure that the legal fall-out is dealt with in a manner which protects the carrier's interests and reputation to the greatest extent possible.

However, it is not just the airline which needs its interests protected and which, as an organisation, comes under legal fire following an accident. For a long time, but increasingly in recent years, following any major incident which results in loss of life, the directors and management of any company involved – as well as individuals within the organisation closely connected to events (such as pilots, air traffic controllers or maintenance engineers) - become the target for potential personal liability. In the sphere of aviation, a hostile litigation environment in many jurisdictions and a culture of blame seem to contribute to what is undoubtedly a global and growing trend towards the imposition of personal liability. One only has to look at some recent examples to see the truth of this:

- Helios B737, Greece, 2005 – criminal charges have been brought against directors of the airline and against a maintenance engineer.
- Concorde, Paris, 2000 – Continental Airlines and two of its employees, two employees of the Concorde programme and an employee of the French Civil Aviation have been charged with involuntary manslaughter.
- Mid-air collision, Überlingen, Germany, 2006: eight Swiss Skyguide air traffic controllers were charged by Swiss prosecutors with negligent homicide.
- One Two Go, Phuket, 2007: criminal charges are anticipated amidst allegations of excessive crew hours and inadequate maintenance.

Whilst civil claims for damages against individual airline directors and employees are not impossible to bring, there is little incentive for potential claimants to pursue such claims given the perceived deep pocket provided by the airline and its insurers. So whilst civil liability cannot be discounted, the chief concern instead is the criminal investigation which, in

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## Gulf Air Visit

On 28 July, representatives from Gulf Air in Bahrain made a Member visit and orientation to Kenyon's European facility at Bracknell, UK. Captain Alfazari Abdulla (Manager Ground Ops QA) and Shahana Shaikh (Emergency Planning Manager) were welcomed to Bracknell by Jerry Allen (Kenyon VP of Planning and Training) and spent a productive day meeting the European staff, discussing emergency procedures and operational response. Kenyon welcomes and encourages all Members to visit any of our facilities at any time.

## Kenyon Applauds Emirates New Manager Contingency Response Planning

Since taking her position with Emirates, Ms Gill Sparrow has aggressively challenged the Emirates Group on preparedness to respond to an incident and to put measures in place to ensure that the Airline will be ready should the unthinkable occur. While effective measures are already in place in Emirates, Gill is leading the initiative to make the current emergency manual, which has over 350 pages, a more concise plan that is easier to activate. In respect of the humanitarian obligations of airlines and states following an accident, Gill believes that the Middle East should look to the existing best-practice laws and guidance of the US, Australia and Brazil until such time as appropriate regional doctrine is available.

Kenyon would like to acknowledge the work of Ms Sparrow and to wish her well in her new appointment.

## Personal Effects Operations Explained

The Senior Incident Director is responsible for the overall incident. The Senior Incident Director designates the PE Director to coordinate the personal effects operations to include search and recovery of personal effects, working with outside agencies and maintaining accountability of all the recovered personal effects. The Director will work directly with families to process and return personal effects to the legal representative. The Search and Recovery Coordinator, PE Processing Coordinator and PE Support Staff Coordinators all report to the Personal Effects Director.

Search & Recovery Coordinator is responsible for the overall recovery of the personal effects from the incident scene. This includes protecting the personal effects from further damage and organizing the shipment to the designated processing site.

PE Processing Coordinator plans the details of how, where and who will be participating in the inventory process. They are accountable for the safekeeping of the personal effects.

Organize process area and set up PEIS, Personal Effects Information System, to manage the process. They review the flow of personal effects processed, and oversee the storage and disposition of the items.

PE Support Staff Coordinator plans and coordinates IT, administration and logistical support. The security for the entire personal effects operations area is also maintained by the Support Staff Coordinator. The base support required to manage a personal effects operation is under the Support Staff Coordinator's area of responsibility.

## Kenyon Emergency Operations Center And Crisis Management Center

The primary purpose of the Kenyon EOC/CMC is to support our operational teams in the field during the initial days of an incident. Basic responsibilities include monitoring requests between the incident site Operation Center and base support activities and ensures appropriate actions are taken. Actions could be the movement of personnel or logistics or administrative support. The EOC/CMC activates immediately upon notice of an incident with initial responsibility of the Team Member Management section to identify and initiate travel to the incident site. The EOC/CMC remains active 24/7 until the Operation Center at the incident site is established. The US, UK offices have dedicated EOC/CMC rooms with equipment necessary to receive, log, task, confirm and track completion of requests for supplies, equipment, personnel and information. These EOC/CMC provide business continuity as they can operate independently or in tandem and the case of catastrophic loss of one, the other can automatically take over.

## What is a Kenyon Team Member?

A Kenyon Team Member is a contracted individual that works with Kenyon and bring the special skills and compassion necessary to meet the requirements of an incident and the demands of the victims and their loved ones. Our Team Members come from all over the world with different backgrounds and experiences from administration to logistics to mental health to forensic scientists. What they have in common is they are prepared to sacrifice to help others under the most stressful time. Currently Kenyon has approximately 1300 Team Members worldwide with each Team Member under contract and signed confidentiality agreement. To manage and support them, we utilize a web based software called CISM CARE that hosts all the team members information. At the time, of incident Kenyon can quickly identify Team Members with the right skills and those closest to the incident to expedite arrival. Team Members get direct support from one of Kenyon's primary offices based on their location, Houston, Bracknell or Sydney. Team Members are given access to their personal records on CISM so they can update their information at their leisure.

*~Liability Of Directors And Officers For Aviation  
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many jurisdictions, goes hand in hand with the accident investigation following any major incident. The fact of a likely criminal investigation cannot be avoided and the best that an airline can therefore do is to prepare itself by ensuring that it has sophisticated procedures and systems in place so as to demonstrate that criminal charges are not warranted and/or to defend itself and its directors and employees against criminal charges if they ensue.

So what can an airline do to protect itself and its people from criminal investigation and prosecution? There is no holy grail but there are some straightforward steps – some structural and some administrative - which will help. We list a few of these below.

**Safety board:** where an accident has occurred, it is almost inevitable that some attention will be focussed on an airline's safety procedures and safety management structure. Part of the battle in overcoming the attentions of the prosecutors is to demonstrate that the airline has an established safety committee or board in place responsible for providing oversight of the organisation's operations from an overall safety and quality control standpoint and which operates to clear and well-defined procedures. Most carriers will already have such a structure in place; those that haven't would be well-advised to instigate one. Avoiding prosecution is not necessarily about proving that nothing went wrong on the day but about proving that there are systems in place which are applied diligently and which are designed to avoid things going wrong.

**Record-keeping:** "smoking guns" in an organisation's documents can irreparably damage a legal case or provide evidence of wrongdoing; however, such incidents are rare. The more usual situation is that documents provide vital evidence in support of a case. As lawyers, our invariable advice is that meeting minutes, reports, file notes, email correspondence and other communications should be retained for a defined period so as to be available to support an airline's legal position. The case which relies for success or failure purely on the word of one witness against another with no back-up documents is a risky one indeed.

**Email chains/internal memoranda:** as noted above, document retention is an important tool in managing the risks associated with criminal investigations following a major incident. Having said that, documents undoubtedly also have the power to incriminate or to create prejudice. The all-pervading practice in the business world of including multiple copy recipients on chains of email correspondence (carrying with it the implication that all recipients are party to the discussion and decision-making evidenced by the email) can create potential exposure to liability where none should exist. Business has to be conducted and management and operational decisions need to be made; we cannot, as lawyers, tell our clients not to communicate within their organisations for fear of inviting investigation from the prosecuting authorities. However, we do recommend that consideration be given to who needs to be copied on email correspondence so as to

avoid any unnecessary broadening of the net of those individuals who might be subjected to investigation.

**Safety oversight:** we have already mentioned the benefits of having a clear safety oversight system, perhaps by means of a company safety board. Members of such a board may well however be targets for investigation if something goes wrong and an accident results. Questions arise as to how much probing of safety issues should be undertaken by directors and management, whether they are members of the safety board or not. As with retaining documents which may provide a defence but which may ultimately prove to be damaging, this can be a case of "damned if you do and damned if you don't". An absence of probing risks accusations of passivity and a lax approach to safety issues. Raising issues creates the expectation that those issues will be followed up and chased down by person raising them. However, as with retaining documents, better to be seen to be asking pertinent safety questions than not.

**Insurance:** given the trend towards criminalisation of aviation accidents, a practical step worth taking is ensuring adequate insurance. Not all liability policies automatically include cover for legal assistance with criminal charges. That cover is obtainable and should always be considered. Criminal proceedings, as well as distressing for those involved, are invariably lengthy and expensive. Adequate insurance can at least deal with the expense side of things.

There is no "one size fits all" solution which will always protect an airline and its personnel against criminal investigation and prosecution following an accident; it also has to be recognised that investigation is probably inevitable. However appropriate audits of an organisation's operational and safety structure, systems and internal procedures is likely to pay dividends or at least give comfort that everything that can be done is being done to combat the attentions of the criminal investigators.

## Meet Our Commercial Services Staff



Frank A. Ciaccio, Director of Commercial Services, has been with Kenyon since 2004. He earned his Bachelor of Science degree in Physical (Forensic) Anthropology and a Master of Public Administration with a concentration in Forensic Anthropology both from the University of New

Mexico, Albuquerque. From 1996-2004, Ciaccio served as a forensic science advisor for the National Transportation Safety Board (NTSB) where he was involved in numerous domestic and international transportation related accidents as a member of the investigative team. Ciaccio facilitated the international disaster victim identification process in Phuket, Thailand for 30 countries which lost citizens in the December 26, 2004 Asian tsunami. In addition, he has served as Senior Incident Director for numerous operations. He regularly speaks at conferences, seminars and workshops on topics of disaster management

and operations. Frank's background in forensics and aviation along with operations adds an ideal mix to the commercial services department regarding lessons learned and real life situations that are important to Kenyon members and potential members.



Carole Bearden, Account Executive, joined Kenyon in 2005. Prior to joining Kenyon she was the Corporate Travel Manager for Service Corporation International, Kenyon's parent company at the time. Bearden has held several

positions within the company from repatriation to commercial services department. Prior to joining Kenyon, Carole was with Continental Airlines and served in various roles throughout her 19 year career in the aviation industry. Bearden holds an Associate Applied Science Degree from the Commonwealth Institute of Funeral Service and. She is a licensed Funeral Director in the State of Texas. With Carole's background in aviation, funeral service and customer care, she brings a wealth of experience and knowledge that is beneficial to Kenyon members and potential members. Carole works from her home office in Denver, Colorado.



Tomas Garner, Account Executive, has been with Kenyon since 2006 and works in the company's European office in Bracknell, UK. Garner has a background in building business relationships, developing customer relations and understanding industry

issues. Prior to joining Kenyon, Tom had positions in corporate sales. Tom works very closely with Kenyon members and potential members in Europe, the Middle-East and Africa, providing a central point of contact and constant dialog with all members from these areas. In his spare time, Garner is an avid soccer player and plays on a local team while continuing his University studies in business. Tom is committed to his position and values the needs of Kenyon members and the unique requirements that individual members have in understanding pre-incident issues.



Charlene Lillico is the Customer Care Executive of Kenyon International Emergency Services. Charlene earned a Bachelor of Arts (Honours) degree in International Hospitality Management from Bournemouth University in 2004. Prior to joining Kenyon, Charlene worked within

hotel management supporting all departments and focusing particularly on guest services and front of house.

Since joining Kenyon in 2004, Charlene has been instrumental in supporting the administration and management of Team Membership, as well as providing direct customer care and support to Kenyon's clients. She has responded to and provided operational support to numerous incidents worldwide including the Tsunami in Thailand, as well as many aviation disasters. Charlene is currently involved in the UK Emergency Operations Center for the recent Spanair incident in Madrid.

## Team Members Provide Humanitarian Efforts And Assistance

Kenyon Team Members James Kramer MPAS, PA-C and Rich Lipich recently were in Sangolqui, Ecuador as part of the International Surgical Missions Team providing surgical care to the medical indigent Sept 13-21, 2008. This one week surgical mission was successful in completing 64 surgeries.