

ICJR Research Brief

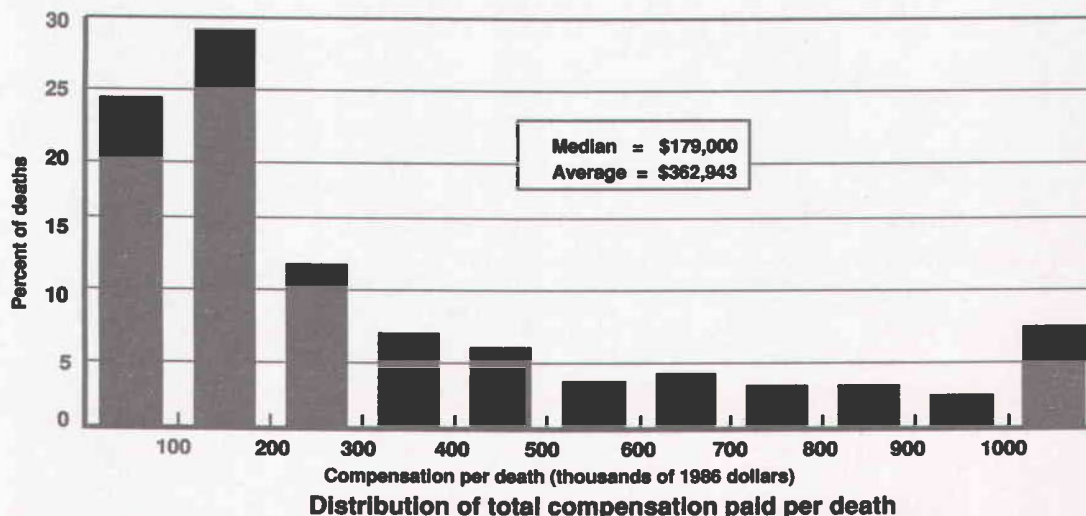
Aviation Accident Litigation

ICJ research has always aimed at developing a basic understanding of how the civil justice system operates. Such an understanding necessarily requires careful examination of both the unique and the common features of different types of litigation. Accordingly, we have looked at such issues as compensation paid and transaction costs in different types of litigation, including automobile accidents, asbestos worker injury, product liability, and medical malpractice. Recently we completed a 3 1/2-year, multi-volume study of another important type of litigation: litigation arising from commercial aviation accidents.

Through the cooperation of plaintiffs' and defense attorneys, defendants, and insurers, our research staff gained access to the detailed records of more than 2,000 cases—the entire population of major aviation accident death cases among U.S. airlines from 1970 to 1984. These unique data permitted a detailed analysis of litigant behavior, patterns of compensation and cost, and—for the first time—actual economic loss incurred.

Two features of this research make it especially interesting. First, aviation accident suits differ significantly from other types of liability litigation. To begin with, they are mass torts involving multiple defendants and possibly hundreds of plaintiffs. Litigants are also represented by specialized attorneys who use established procedures to coordinate their work. Furthermore, the dispute generally focuses exclusively on determining the appropriate level of compensation, whereas most tort litigation also involves disputes about what caused injuries and who is liable.

Second, prior ICJ litigation studies have focused on the amount of compensation paid and the level of transaction costs, whereas this research incorporates a new element: the plaintiff's economic loss. By incorporating measures of plaintiffs' actual economic loss, we can not only compare compensation paid to loss suffered, but also consider the potential implications of such comparisons for the tort system's overall performance. This represents a depth of analysis that was not possible in previous ICJ research.



Following is a sampler of findings from this extensive study.

Litigant behavior

In air accident cases, plaintiffs almost always file claims and about 90 percent of them hire lawyers. However, only about two-thirds of the claims result in lawsuits and less than 15 percent of the suits go to trial.

Claims involving larger losses are the ones more likely to result in lawsuits, to go to trial, and to take longer to settle. A 1 percent increase in loss increases suit probability by 4 percentage points, trial probability by 1.7 percentage points, and length of time to resolutions by almost 9 percentage points. The consistency of this finding across all litigant outcomes constitutes strong evidence about the importance of the stakes in determining which cases make greater demands on the legal system.

Compensation and costs

Payments for claims without a lawsuit, for settlements, and for cases that went to trial averaged about \$256,000, \$388,000, and \$599,000, respectively. Together, the lawyers on both sides typically collected less than a third of the money changing hands, substantially less than for tort cases in general (1985 average: 50 percent). In absolute dollar terms, however, legal fees and expenses in aviation accidents were much higher than for other types of torts—averaging \$121,000 per death, with plaintiffs spending an average of \$72,000 and defendants paying \$49,000.

Compensation and loss

Airlines and other defendants compensated victims' survivors for slightly less than half—an average of about \$363,000 or 49 percent—of their average \$749,000 economic loss. However, this loss calculation does not take into account payments made to lawyers. Once legal expenses are included, the net recovery rate drops to 39 percent. This calculation also omits intangibles such as mental anguish or lost companionship.

Compensation rates vary greatly by level of loss. Survivors of the least affluent victims received the highest awards relative to their monetary loss. Recovery rates involving the more affluent declined sharply—to less than 25 percent when loss exceeded \$2 million.

Furthermore, claimants with similar monetary losses often recover widely varying amounts. For example, survivors of two comparable U.S. citizens might receive very different awards if one of the decedents was flying on an international treaty ticket that places a \$75,000 cap on recovery.

The ICJ's 3 1/2-year research effort is one of the first systematic comparisons of compensation and economic loss for a specific class of litigation and the most comprehensive examination of the legal aftermath of air crashes ever undertaken. The study's findings, along with the landmark methodology we developed for calculating loss, are detailed in the following volumes:

Costs and Compensation Paid in Aviation Accident Litigation, R-3421-ICJ, by J.S. Kakalik, E. M. King, M. Traynor, P. A. Ebener, and L. Picus.

Dispute Resolution Following Airplane Crashes, R-3585-ICJ, by E. M. King and J. P. Smith.

Computing Economic Loss in Cases of Wrongful Death, R-3549-ICJ, by E. M. King and J. P. Smith.

Economic Loss and Compensation in Aviation Accidents, R-3551-ICJ, by E. M. King and J. P. Smith.

The overview report in the series, *Executive Summaries of the Aviation Accident Study*, R-3684-ICJ, presents the study's general findings and discusses policy applications.

The research summarized in this brief was carried out within the Institute for Civil Justice of The RAND Corporation. For copies of the publications listed above, contact Publications Department, The RAND Corporation, 1700 Main Street, P.O. Box 2138, Santa Monica, CA 90406-2138, (213) 393-0411.