

Ukrainian International Airlines Flight 752: What Families Need to Know

Date: January 20, 2020

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On January 8, 2020 Ukraine International Airlines Flight 752 crashed shortly after takeoff from Tehran airport. All 176 people on board were killed including many Canadian citizens and residents. This horrific tragedy has had, and will continue to have, a major impact on the lives of the victims' families.

We have set out answers below to questions that families may have. These are general answers and you should speak to us if you would like answers that would apply to you.

WHAT SHOULD FAMILIES EXPECT?

This is an overwhelming time for anyone related to the victims of UIA Flight 752. Not only do you have to deal with the grief but you must deal with all the challenges that arise. One of these is dealing with the claims.

There is a huge amount of information and misinformation floating about. The purpose of this summary is to address some of the questions families may have and to try and bring some clarity to the claim process.

While the claim process will never begin to address your grief, families should know that the claim process is well established and will result in a good financial result for families. It will also help to ensure that the truth comes out. The family will have meaningful control and there will be accountability.

Several families have issued claims which are now proceeding. One family has issued a claim under the Class Proceedings Act seeking approval of a class action and an agreement with litigation investors. For reasons explained below we believe this last action is not in the best interests of the families.

WHY Should FAMILIES MAKE CLAIMS?

After these tragic events, families seek information, accountability and compensation. All are important and the claim process should ensure that all are addressed.

While financial compensation can never begin to fill the void left, it can help by addressing the financial consequences of such a loss and by providing a measure of meaningful accountability.

WHAT CLAIMS CAN BE MADE AND AGAINST WHOM?

Because this happened on an international flight, there are special rules that apply which change the process in very important ways.

Because of these unique rules, family members should make a claim against UIA which is strictly liable for at least a substantial amount of compensation, and probably liable for all your damages.

It is likely that a claim will be made against Iran by Canada. However this is governed by different rules and considerations and is not a claim brought by the families. It should not delay or affect the decision to make the families' claims against UIA. There is no need for any family to make a claim against **Iran to recover their full damages under Canadian law.**

WHEN SHOULD A CLAIM BE STARTED?

Families are dealing with many pressing matters. There is no requirement for a claim to be made immediately though such claims must be brought within the permitted periods.

However, the sooner a claim is started, the sooner it is likely to be concluded. So the sooner a family member is able to address the claim, the better.

Several families have already issued and served their individual actions which are now proceeding.

WHERE CAN A CLAIM BE MADE?

The rules are unique and complex because they are subject to international law and considerations.

Different families may have different choices. But if the passenger bought a Canadian ticket or resided in or was flying to Canada, then it is likely that their family may claim against UIA in Canada or Ukraine.

This is true wherever the family members may live in the world.

The claim against Iran may be made in different ways or places, including an international court or tribunal. It is possible that it can be made in Canada though the basis for a claim in a Canadian court is limited.

WHAT IS CONSIDERED IN YOUR CLAIM?

This may vary according to whom the claim is made against and where the claim is advanced.

For those families who claim in Canada, the amount of the damages will be determined under Canadian law.

For the claims against UIA in Canada, compensation is normally assessed on an individual basis. We look at the loss of each family member and obtain the evidence necessary to demonstrate what these losses mean for that family member. It is very important that the claim of each family member is carefully considered individually.

In Canada compensation is generally awarded for any economic loss. This includes the loss of any future financial support. The damages also reflect the loss of services and other support family members provide for each other, including care, guidance and companionship. Compensation is not awarded for grief.

The claim against Iran is not limited in this way. It is quite possible that compensation which reflects other considerations may lead to additional compensation.

It is also possible that interim payments will be made similar to the payments offered by the Canadian Government and families may be entitled to other benefits or assistance.

WHAT EVIDENCE DO WE NEED TO HAVE FOR a CLAIM AGAINST UIA?

You will *not* need to have evidence with respect to how the crash occurred.

It may be helpful to have any evidence with respect to the ticket or how it was purchased.

We will also need a variety of evidence in order to prove the full amount of your claim. The list is detailed but the main point at this stage is to ensure that no evidence is lost.

DO I NEED A LAWYER?

You are not legally required to have a lawyer. However, given the many issues involved, we believe all families should have a competent, experienced and trusted lawyer.

HOW DO WE CHOOSE A LAWYER?

Grief puts us in a vulnerable position. It compromises our ability to make decisions. You should be very careful to select a lawyer who has the necessary experience and ability and you should be comfortable with the lawyer. You will have to work with the lawyer and rely heavily on them. So you should be careful to make sure you make the right choice.

While we believe a claim should proceed as soon as possible, it is more important that you retain the right lawyer for you.

There are several ways to find a lawyer. However we believe the best way is to investigate carefully to ensure the lawyer has the particular experience and expertise for this claim. You should be very cautious in doing so. Look for specific and detailed facts about the lawyer's experience, not general descriptions of experience, ability or expertise.

You should then look for arms-length recommendations and meet so that you can ask any questions you have and see if you feel comfortable with the lawyer. Many are uncomfortable meeting in person due to the COVID-19 pandemic but meetings can be arranged using services like WebEx or Zoom.

HOW WOULD WE PAY THE LAWYER?

There are several different ways to pay lawyers. However, in cases of this type they are usually paid on the basis of what is referred to as a contingent fee. This means that you do not pay anything until the claim is successfully completed. **There is no need to provide any funds or pay a litigation funder.** At the time the claim is settled the lawyer is paid based on the terms of the written retainer agreement signed at the time the lawyer is first retained.

These terms may vary and different approaches can be taken.

It is common for lawyers to be prepared to meet with families before they are retained to answer questions without charge.

HOW LONG WILL IT TAKE TO SETTLE MY CLAIM AGAINST UIA?

No one can say with certainty how long this will take. However the period tends to be one of three:

- In some cases the claim can be properly assessed and settled within months;
- More often it takes about two years from the time the claim is formally made;
- If the case does proceed to trial, this may take 3 to 4 years.

In all these cases the time runs from the time your individual claim is issued.

In some cases where the airline takes steps to delay the process or refuses to negotiate it can take longer. But in recent years this has been rare.

AGAINST IRAN OR OTHER PARTIES?

It is more likely that this process will take years. This is one reason that it is very desirable to proceed with the claim against the UIA without delay. The claim against Iran will be separate and can proceed separately.

It is desirable to coordinate both claims. The Canadian Government, which is likely to proceed with the claim against Iran, is likely to co-operate with families and their lawyers. But there is no reason not to proceed with the claim against UIA now.

If a family does wish to make an individual claim against Iran, this will face serious obstacles under Canadian law and may adversely affect other rights families may have. However, this can be done in a separate individual claim which may minimize the risk that this will delay the claim against UIA to proceed.

The Canadian Government and others have also provided assistance programs intended to provide some short term relief to families. These are independent of the families' rights to compensation.

WHO CONTROLS THE CLAIM PROCESSES?

In an individual action against UIA, *you* control your claim. (Class actions are different and are discussed below.) You should be fully advised of all material information and given meaningful choices to consider. You choose your lawyer and you provide instructions to your lawyer.

It is probable that the Canadian Government will control the process in the claim against Iran. However, it is likely that they will work with families and their lawyers.

You should know that no one can speak for you other than your lawyer and that no one, including the lawyer, can settle your claim without your express agreement. We only settle cases on the basis of a written Direction which sets out the precise terms of the settlement and exactly how much you will receive after payment of all expenses.

WHAT EXPERIENCE HAVE YOU HAD WITH THIS TYPE OF CLAIM?

We have acted for families and those injured in a long list of fatal aviation losses arising from crashes caused by pilot and equipment failures and also planes attacked by missile, bomb and hijackers. Some of these cases are listed below.

(For a fuller list go to <https://www.blaney.com/practice-areas/aviation>)

KOREAN AIR LINES 007

This aircraft was shot down by the Soviet Union. We acted for the families of the Canadian passengers.

AIR INDIA 182

This flight was destroyed by terrorists' bomb killing 329 people on board. In addition to acting for our clients, Rod Winsor was appointed by the Ontario Supreme Court as one of the four lawyers to act as the Plaintiffs' Committee to take the lead on the difficult liability portion of that case.

This case included claims against the airline but also a variety of other parties, including the Canadian Government, on the basis that they shared responsibility for allowing the bomb on board the aircraft.

AIR CANADA CINCINNATI FIRE

A fire broke out on a DC-9 on a flight from Texas to Canada with 41 passengers. We acted for one of the families of a passenger who was killed and 3 of the survivors who were injured. We also coordinated the efforts of the Canadian plaintiffs' lawyers.

HIJACKINGS AND OTHER CLAIMS

We acted for Canadian victims in two hijackings, the Lufthansa Munich hijacking and the Ethiopian Airlines 961 which resulted in the crash of the aircraft.

Most recently we acted for the Canadian family of a victim in the crash of EgyptAir 804 where it was initially alleged that it had been caused by a bomb.

WHAT IS A CLASS ACTION AND IS IT APPROPRIATE IN THIS CASE?

A class action is one where a Representative Plaintiff sues on behalf of all the members of a class. It is common in claims where the size of the individual claims is so small that no one person can justify the cost of proceeding with the claim. In those cases a class action can provide access to justice where no claim would otherwise be brought.

There are advantages and disadvantages to class actions. We have extensive experience with class actions having successfully acted for the Class and defendants over decades. However in a case such as this claim against UIA and where the claims are large, we believe ***the disadvantages are serious and there are no substantial advantages for the families.***

There are several reasons for this. For example:

- **Delay:** There are additional steps in a class action which delay the action. A law firm has issued an action hoping to proceed as a class action. The Court has now tentatively scheduled the motion to decide whether it can for February, 2021. This date may have to be delayed further. If the action a class action is not approved the families who have not started their own individual actions will then have to start from the beginning.
- **Loss of Control:** In a class action the representative plaintiff and class counsel control the litigation. While members of the class will have some input if a tentative settlement is negotiated, *they will not have the right to make individual choices* and will have no control of the action or the negotiation or approval process. While any settlement of a class action is subject to court approval, ***the claims of class members may be settled without the agreement of individual class members.***
- Class members also do not control the choice of lawyer, the terms of the retainer or whether a litigation funder is involved. (Litigation Funders are explained below.)

A class action may delay settlement of individual claims and make them more difficult. However we are proceeding with individual actions and taking steps to try to minimize the adverse consequences on the families.

In short we believe that the families will be much better off pursuing individual claims.

You should also know that if anyone issues a claim seeking to proceed by way of class action, this does not mean the Court will certify it, which is required to proceed as a class action. No class action has been approved in this case. You will in any event *not be required to be a member of the class and you will be able to proceed with your own claim.*

However, opting out requires you to take formal steps within a limited period so that if you miss the deadline you will be deemed to be a member of the class which you want to or not. If you have already issued an individual action you will be able to continue such action and not have to start all over.

WHAT IS A LITIGATION FUNDER AND WHAT IS THE EFFECT IF THEY ARE INVOLVED?

In recent years some investors have sought to make money by funding litigation. The arrangements vary but what is common is that they expect to make substantial money as a result of their investment.

Typically they enter into an agreement with a law firm which provides that they will invest in the litigation in return for a profit. As the amounts to be paid to the funder are very substantial several questions should be considered:

- How much does the funder expect to be paid?
- Who pays this?
- What does the funder provide in return?

HOW MUCH DOES THE FUNDER CHARGE?

The amount to be paid varies but it has to be substantial as the only interest the funder has is to make a substantial return on its investment.

WHO PAYS?

Typically these agreements provide that the funder is paid interest on monies advanced to the class counsel and a portion of the families' settlements. This leaves less money for the families and to pay for proper legal services from competent lawyers.

WHAT DOES THE FUNDER PROVIDE IN RETURN?

This is a very good question in this case. The most experienced plaintiffs' aviation litigation law firms in Canada are proceeding without any funder. The reason for this is that there is no benefit in funding. It only adds to the costs which are ultimately paid directly or indirectly by the families.

Even trying to include a funder in this case adds another step to the litigation as the funder will have to seek approval of its proposed agreement.

HOW SHOULD WE PROCEED

In short, we believe that families should:

- Retain a competent and trustworthy lawyer with substantial experience in international flight claims without delay.
- Proceed with an individual action without delay. This will maximize the chance of negotiating a fair settlement without as quickly as possible. In the unlikely event this is not successful, this will ensure that your claim is fairly concluded at the earliest possible date.

This article is intended to provide general information and comment, and is not intended to provide legal advice. You should speak to us if you would like answers that would apply to you. Please contact Roderick S.W. Winsor at 416-593-3971 or rwinsor@blaney.com. For more information about Rod please visit: <https://www.blaney.com/lawyers/roderick-winsor>

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