

# CLIFFORD LAW OFFICES



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May 7, 2009

Honorable Lynne A. Osmus  
Acting Administrator  
Federal Aviation Administration  
800 Independence Avenue, SW  
Washington, DC 20591

Acting Administrator Osmus:

Continental Connection Flight 3407 crashed while on approach to Buffalo Niagara International Airport on Feb. 12, 2009, killing everyone aboard. I represent a number of families including Robert and Denise Perry of Loveland, Ohio, whose 27-year-old son Johnathan, was among the passengers. We understand that the National Transportation Safety Board (NTSB) investigation is underway into determining why the crash occurred. Preliminary information released by the NTSB indicates that the pilots likely failed to maintain the minimum safe airspeed while on approach in icing conditions, they stalled the airplane, and they did not have enough altitude to recover prior to impact. I have enclosed an article I wrote that appeared in the Sunday, May 3 issue of the Jamestown, New York Post-Journal on the issue of low air speed alerters.

Our research indicates that this type of accident has occurred numerous times in the past and the crash of Flight 3407 might have been prevented if the FAA had acted to require low airspeed alerter systems after prior recommendations that it do so.

In 1996, the FAA's own Human Factors Team wrote that existing stall warning systems are inadequate and that earlier alerting of low airspeed is necessary. Again in 2002, the FAA's Aviation Rulemaking Advisory Committee (ARAC) called for low airspeed alerters in all new aircraft for the same reason.

On Dec. 12, 2003, the NTSB, in issuing its report on the fatal turboprop accident involving the late Sen. Paul Wellstone, made recommendations to the FAA calling for low airspeed alerting systems due to the inability of traditional stall warning systems to prevent the recurrence of fatal stalls in commercial airplanes, such as occurred on the Wellstone turboprop.

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The Board's recommendations (A-03-053 and -054) came in the wake of a number of air crashes that were caused by a common and thus highly probable "human error" – the flight crews' failure to maintain airspeed – the same thing that may have occurred during Flight 3407. The NTSB's recommendations were that the FAA convene a panel of aircraft design, aviation operations and aviation human factors specialists, including representatives from the National Aeronautics and Space Administration, to determine whether a requirement for the installation of low airspeed alerter systems in airplanes engaged in commercial operations would be feasible and to submit a report of the panel's findings. If feasible, the NTSB further recommended that it become a requirement that such low airspeed alerter systems be installed in commercial aircraft.

Despite the NTSB having reiterated these low airspeed alerter recommendations in 2006 after another similar fatal accident, your agency has not taken the recommended action. Further, your agency has not responded to the NTSB regarding these recommendations since October of 2006. It is outrageous and unacceptable that the FAA and the airline industry were sitting on two NTSB recommendations that, if acted on, would likely have prevented this crash.

As you aware, the NTSB is holding a Public Hearing on this accident on May 12-14, 2009, at its Washington, DC Board Room. On behalf of the families I represent, we respectfully request that the NTSB and your agency publicly discuss the status of these low airspeed alerter safety recommendations at this Public Hearing. The families would like to see a summary of every FAA and industry action that has been taken on this subject since the NTSB's recommendations were issued in 2003, including the reported installation of low airspeed alerter functions on various airplanes such as Boeing and Airbus jets.

Given that low airspeed alerter systems have already been developed and certified for some airplanes, and that the FAA's own human factors and ARAC staff support their use, we don't think it is appropriate for the FAA to spend any further time studying the feasibility of such systems as recommended by the NTSB in A-03-053. The families believe the FAA should proceed with the action sought by recommendation A-03-54, which is to require that low airspeed alerters be installed on all airplanes operating under 14 CFR Parts 121 and 135.

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On behalf of the families whose loved ones were killed, I would like to say that we want the mistakes, oversights, and airplane system deficiencies that caused or contributed to this accident to be uncovered and corrected to ensure that no other family ever endure such a preventable loss. This is a very painful process, but these families feel they must go through it so that the flying public is assured that all necessary steps are taken to prevent a similar tragedy.

Very truly yours,

  
ROBERT A. CLIFFORD

RAC/cm

Enclosure

cc: Congresswoman Jean Schmidt (OH)

Senator Sherrod Brown (OH)

Senator George Voinovich (OH)

Senator Byron Dorgan (ND)

Chairman of the Aviation Operations, Safety and Security Subcommittee  
to the Commerce, Science and Transportation

Congressman Jerry Costello (IL)

Chairman of the Aviation Subcommittee to the Transportation and  
Infrastructure Committee

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### Lawsuits Trying To Right A Wrong

By Robert A. Clifford [editorial@post-journal.com](mailto:editorial@post-journal.com)

POSTED: May 3, 2009

Having filed several lawsuits in federal court on behalf of families who lost loved ones in the crash of Continental Connection Flight 3407 in Clarence Center near Buffalo, it is important to note some information that needs to be made public about this terrible tragedy.

The complaint alleges information our experts uncovered that has yet to come to light - the fact that the manufacturer and airlines failed to install a low airspeed alerter system which, if installed, would have prevented the accident by giving the crew of Flight 3407 additional and earlier cues regarding the aircraft's low airspeed. A low airspeed alerter system gives a flight crew additional warning time to prevent a potentially catastrophic wing stall, compared to the traditional "stick shaker," which history has proven does not always provide adequate warning time to prevent fatal accidents.

As the discovery process in these cases moves forward, it will be particularly tragic if it becomes evident that those responsible for the crash decided not to install a low airspeed alerter system merely to save time and money or because it has not yet been mandated by the Federal Aviation Administration (FAA).

This raises the question of where is the FAA in all of this? In 1996, the FAA's own Human Factors Team wrote that existing stall warning systems are inadequate and that earlier alerting of low airspeed is necessary. Again in 2002, the FAA's Aviation Rulemaking Advisory Committee called for low airspeed alerters in all new aircraft for the same reason.

On Dec. 12, 2003, the National Transportation Safety Board (NTSB), in issuing its report on the fatal turboprop accident involving the late Sen. Paul Wellstone, made recommendations to the FAA calling for low airspeed alerting systems due to the inability of traditional stall warning systems to prevent the recurrence of fatal stalls in commercial airplanes, such as occurred on the Wellstone turboprop.

The Board's recommendations came in the wake of a number of air crashes that were caused by a common and thus highly probable "human error" the flight crews' failure to maintain airspeed as appeared to have occurred during Flight 3407. The NTSB's recommendations were that the FAA convene a panel of aircraft design, aviation operations and aviation human factors specialists, including representatives from the National Aeronautics and Space Administration, to determine whether a requirement for the installation of low airspeed alerter systems in airplanes engaged in commercial operations would be feasible and to submit a report of the panel's findings. If feasible, the NTSB further recommended that it become a requirement that such low airspeed alerter systems be installed in commercial aircraft.

After more than five years, the FAA has yet to act on these recommendations.

These families, indeed the world, wants the mistakes and oversights that caused or contributed to this accident to be uncovered to ensure that no other family ever endure such a preventable loss. It is a very painful process, but they feel they must go through it so that the flying public is assured that all necessary steps are taken to prevent a similar tragedy.

Robert A. Clifford is senior partner at Clifford Law Offices in Chicago.

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