

Editorial – April 27, 2007

What is the “Half Life” of British Airway’s Legal Liability in the Litvinenko Matter?

On November 23, 2006, former KGB spy Alexander Litvinenko died at a London hospital from apparent Polonium 210 poisoning. Polonium 210 is a highly toxic, highly radioactive, powdery substance. It is used as a trigger in nuclear weapons, and is a byproduct of nuclear reactors. Polonium 210 is toxic to humans if ingested, inhaled or absorbed. An amount of 10 billionths of a gram, if inhaled, is fatal to a person. Therefore, a single gram of Polonium 210 can, theoretically, kill 100 million people.

On his death bed Litvinenko pointed his finger at Russian Federation President Vladimir Putin, as complicit in his poisoning. At last November’s European Summit, Putin denied any involvement in Litvinenko’s death. The Russian foreign ministry has similarly denied any involvement on the part of the Russian government.

The intrigue has spread to a number of other individuals, who purportedly came into contact with Litvinenko during the days leading up to his hospitalization, as well as some of the places he frequented. More ominously, a number of British Airways planes have been identified as contaminated. British Airways has attempted to contact the approximate 36,000 passengers who have flown on the 200 or so flights, during the time surrounding Litvinenko’s poisoning, advising them to seek medical advice if they be so inclined.

Of course the British National Health Service indicates that there is no threat to public health. What else would we expect them to say? That about 36,000 men, women and children have potentially come into contact with one of the planet’s most deadly substances, and that all involved should run to their local hospitals for tests? Such would present a huge public health crisis throughout Europe and beyond.

It is likely that there were Americans flying on some of the contaminated British Airway’s flights. The long arm of the American justice system extends well beyond the former 13 colonies, all the way back to England. An American court, many perhaps, would have jurisdiction over British Airways. Notably, British Airways has a large presence, and sells many tickets out of its New York office. The American class action tort system punishes, quite often, deep pocketed defendants, when it is shown that they cause harm to others, by way of their negligence.

Just how bad was the exposure on those British Airway’s planes? It is possible that we will only know after clusters of “cancer cells” appear or we may never know for sure. Perhaps, more useful to potential plaintiffs, however, is the evidence gathered by British Airways and British Intelligence. It is likely that an expert, some expert, at least the expert hired by the plaintiffs, would conclude that the exposure was *très mal* indeed.

In such a case the Billion Dollar question would be: Was British Airways negligent in allowing radioactive persons or things onto their planes? In a post 9/11 world; did British Airways take all reasonable precautions to keep the flying public, including Americans safe? They check foot wear don’t they? What about passing through a simple harmless Geiger counter, right behind the metal detector? Could British Airways have kept off of its planes one of the world’s most deadly poisons?

What is not certain is whether a class action lawsuit will ever be filed. What is certain, however, is that the full life of British Airway’s legal exposure is about three years, which is the U.S. statute of limitations on tort claims; well beyond the 138 day half life of Polonium 210.

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