Practice Pointers: Investigating Disaster or Accident Sites

Gaining access to wreckage and property controlled by federal or state investigatory agencies can entail jumping through some bureaucratic hoops. If you are a lawyer or investigator seeking such access, the following tips may help:

1. Some wreckage sites are controlled jointly by the federal government and local officials. Before you draft anything, determine which agency is actually in control of the site at issue.

2. Wait a reasonable period following the disaster or accident. The government usually can claim an “urgent interest” in recovering bodies of the victims and clearing the site of unstable and dangerous wreckage. During this recovery phase, it is unlikely you will be granted access.

3. Once the site or wreckage has been stabilized, proceed under the state or federal regulations governing access. For example, for National Transportation Safety Board-controlled sites, refer to 49 C.F.R. Chapter 8.

4. The Investigator-in-Charge is your ticket to access. The Investigator-in-Charge has the discretion under the regs to permit people to gain “access to wreckage, records, mail, or cargo in the Board’s custody.” See 49 CFR §831.12.

5. Outline in writing the justification for the access and emphasize to the Investigator-in-Charge the limited nature of the request. Explain in detail how your access will not in any way impede the pending investigation, and discuss the scope and timing of the access you seek.

6. In some situations, the wreckage will be moved to a safe area for storage during an investigation, which typically can take one year to complete. Determine where the alternative site is, and seek access to the alternative site rather than the accident site, if possible. The Investigator-in-Charge will more likely grant access to the alternative site as opposed to the place of the actual accident because of safety concerns.

7. If the Investigator-in-Charge denies your request, most courts hold that you can seek judicial review of the NTSB decision, but the standard of review for the court will be quite narrow: abuse of discretion. Most people gain access by working with the Investigator-in-Charge rather than suing.