

August 8, 2024

VIA E-MAIL

Michael Carlinsky
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue
22nd Floor
New York, NY 10010-1601
michaelcarlinsky@quinnemanuel.com

RE: Delta Air Lines Response to CrowdStrike

Dear Michael,

I have your letter dated August 4, 2024.

We appreciate CrowdStrike's "apology to Delta." However, an apology alone in these circumstances is vastly inadequate, and when accompanied by misstatements and attempts to shift the blame to Delta of doubtful sincerity.

We were surprised and disappointed by CrowdStrike's efforts to minimize the international disaster it caused (including by seeking to downgrade it to an "incident" or an "outage"). The CrowdStrike update caused a catastrophic shutdown of more than 8 million computers around the world and disrupted countless companies' business operations. At Delta, it shut down more than 37,000 computers and disrupted the travel plans of more than 1.3 million Delta customers.

We were even more surprised and disappointed by CrowdStrike's decision to try a "blame the victim" defense. There is no basis – none – to suggest that Delta was in any way responsible for the faulty software that crashed systems around the world, including Delta's. When the disaster occurred, dedicated Delta employees across the company worked tirelessly to recover from the damage CrowdStrike had caused. Their efforts were hindered by CrowdStrike's failure to promptly provide an automatic solution or the information needed to facilitate those efforts. Incredibly, CrowdStrike released an automatic faulty update that crashed millions of Microsoft-Windows based machines without being able to automatically correct that error for several days. It is CrowdStrike's conduct, and CrowdStrike's conduct alone, for which CrowdStrike is liable.

Although you say "CrowdStrike took responsibility for its action," CrowdStrike's current position as reflected in your letter seeks in every way to escape that responsibility.

Without trying at this point to correct every inaccuracy in your letter, I note:

- People Suffered Because of Your Faulty Update: Given CrowdStrike’s conduct, there is no “liability cap” at “single digit millions.” The contract does not cap liability or damages for gross negligence or willful misconduct. Your position disregards the massive impact that CrowdStrike’s conduct has inflicted on Delta, its customers, and its people.
- The PIR Confirms Your Tortious Conduct: Contrary to your letter, CrowdStrike’s Preliminary Post Incident Review (“PIR”) confirms that CrowdStrike engaged in grossly negligent, indeed willful, misconduct with respect to the Faulty Update. CrowdStrike’s PIR admits that CrowdStrike did not properly validate or test the Faulty Update, relying instead on tests of other earlier-released components of its Falcon system. CrowdStrike’s Root Cause Analysis (“RCA”) of the Faulty Update, issued on August 6, 2024, admits that had it maintained basic software development, testing, and validation procedures, the July 19 disaster from the Faulty Update would not have occurred. Egregiously, there was no staged rollout to mitigate risk and CrowdStrike did not provide roll-back capabilities.
- CrowdStrike Showed No Sense of Urgency or Appreciation for the Scale and Scope of the Damage It Caused: CrowdStrike also did not work “tirelessly” to help Delta restore its systems. CrowdStrike’s offers of assistance during the first 65 hours of the outage simply referred Delta to CrowdStrike’s publicly available remediation website, which instructed Delta to manually reboot every single affected machine. While CrowdStrike eventually offered a supposed automated solution on Sunday, July 21 at 5:27 pm ET, it introduced a second bug that prevented many machines from recovering without additional intervention.
- CrowdStrike’s Monday Evening Offer of Additional Support Was Too Late: CrowdStrike CEO George Kurtz’ single offer of support to Ed Bastian on the evening of Monday, July 22, was unhelpful and untimely. When made—almost four days after the CrowdStrike disaster began—Delta had already restored its critical systems and most other machines. Many of the remaining machines were located in secure airport areas requiring government-mandated access clearance. By that time Delta’s confidence in CrowdStrike was naturally shaken.
- Delta’s IT Investments Resulted in Worldclass Operational Industry Performance: Delta rejects CrowdStrike’s misplaced attempt to shift responsibility for its failures to Delta’s “IT decisions and response to the outage.” First, those “decisions and response” had nothing to do with the cause of the outage. Moreover, for the last several years, including prior to and following its recovery from the Faulty Update, Delta’s operational reliability and customer service has led the airline industry. Delta has achieved its industry-leading reliability and service due, in part, to investing billions of dollars in information technology.
- Reliance on CrowdStrike and Microsoft Was the Reason Delta Took Longer to Fully Recover: Contrary to your misrepresentation of Delta’s technology, the reason for Delta’s disproportionate experience relative to other airlines, was its reliance on

CrowdStrike and Microsoft. Approximately 60 percent of Delta's mission-critical applications and their associated data—including Delta's redundant backup systems—depend on the Microsoft Windows operating system and CrowdStrike. Delta has long regarded CrowdStrike and Microsoft as reliable technology providers. Delta's reliance on CrowdStrike and Microsoft actually exacerbated its experience in the CrowdStrike-caused disaster.

- CrowdStrike Caused the Disruption to Delta's Crew Tracking System: The CrowdStrike disaster disrupted Delta's operations resulting in thousands of crew members being dislocated from their scheduled assignments for an extended period of time. The resulting prolonged delay caused a massive amount of incomplete and inconsistent data to be delivered to Delta's crew tracking system once it was finally restored. The magnitude of the backlog on the day of the disaster was substantially greater than any backlog resulting from prior disruptions and required several days to resolve. It required significant human intervention by skilled crew specialists to get Delta people and aircraft to the right locations to resume normal, safe operation. By July 24, Delta's operations had fully stabilized to industry norms, and, by July 25, they had fully recovered to Delta's targeted levels of reliability. However, the impact of CrowdStrike's Faulty Update on Delta's customers and crews between July 19 and July 23 was severe and substantial.

We are still working to understand the full extent of what CrowdStrike did (and didn't do) that resulted in the disaster that everyone in the world other than CrowdStrike seems to know occurred. Rather than continuing to try to evade responsibility, I would hope that CrowdStrike would immediately share everything it knows. It will all come out in litigation anyway. If CrowdStrike genuinely seeks to avoid a lawsuit by Delta, then it must accept real responsibility for its actions and compensate Delta for the severe damage it caused to Delta's business, reputation, and goodwill.

Sincerely,

David Boies

cc: Peter Carter
Delta Air Lines, Inc., Executive Vice President - External Affairs