

# Precedent

## TWA 800—NTSB Nearing End of Investigation

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The firm represents the families of 60 decedents of the TWA Flight 800 air disaster. The litigation arises from the crash of a Boeing 747 off the coast of Long Island on the evening of July 17, 1996. All 230 passengers and crew members perished when the fuel/air vapors within the center wing tank ignited. The individual wrongful death lawsuits have been consolidated for pre-trial liability purposes before Judge Sweet of the United States District Court for the Southern District of New York (Manhattan). Frank H. Granito, Jr. of the firm's New York office is Co-Lead Counsel of the Plaintiffs' Committee, and his son, Frank H. Granito, III is Co-Liaison Counsel and a member of the Committee.

The case against TWA is governed by the treaty known as the Warsaw Convention. Thus, in order to prevail on the issue of liability, plaintiffs must prove that the crash was the result of TWA's "wilful misconduct". Conversely, the case against Boeing is based upon a theory of strict products liability which imposes liability not on the basis of fault or negligence, but because the defendant

sold a product in a defective condition. The discovery conducted to date, coupled with the federal investigation, raises serious questions about the design of the airplane's center wing tank. Boeing was aware of the dangers associated with fuel/air vapors as early as the 1940's and designed its airplanes with the knowledge that the

vapors created an explosive environment within its fuel tanks. In addition, Boeing decided to place the air conditioning packs for the 747 directly beneath the center wing tank. Thus, when the packs were in operation, the heat (400+ degrees F) would radiate directly into the Center wing tank.

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On July 17, 1999 the community of Montoursville, Pennsylvania gathered to dedicate a memorial to the friends and family lost in the TWA 800 disaster. Sixteen high-school students and five adult chaperones from the small town will be forever remembered and watched over by the monument of an angel placed in commemoration of their lives. The statue bears the following inscription:

"On Sunday evening, July 21, 1996, a cloud in the form of an angel appeared above the Montoursville High School.

At the angel's feet were twenty-one smaller white clouds, at first in a circle, then appearing in two straight rows.

Two small rainbows appeared and arched over the Montoursville Community. The sky was unusually calm that evening and was a beautiful shade of blue. A smaller, dove-shaped cloud formed and the sky became a magnificent color of pink and blue clearing as sunset arrived.

Many who witnessed these formations felt a calm, inner peace. As word spread throughout the community of these events an overwhelming sense of spiritual support developed. The angel became a symbol that linked the community to those aboard Flight 800.

This image captured on film by a local resident is believed by many to have been a sign that communicated the well-being of our loved ones."

# Profile

FRANK H. GRANITO, JR.



As counsel to Speiser Krause, Frank continues to do what he's been doing so well for the past 32 years, representing plaintiffs in air crash litigation. Frank continues to be

responsible for the New York office's handling of general aviation litigation, and has been lead or co-lead counsel in many landmark aviation cases.


Frank's life-long fascination with aviation was fostered by an adventurous mother who took him for a ride in an airship when he was 4 years old. As a youngster growing

up in the East Bronx community called Clason Point, Frank dreamed of being a Naval aviator, of marrying Betty Altieri (the prettiest girl in Clason Point) and, when he was older, of being a lawyer.

With characteristic determination, he accomplished all of those goals. Frank married Betty on May 19, 1956, and he served several years of active duty as a Naval aviator. Thereafter, Frank graduated from St. John's Law School, and joined the Speiser firm in 1967. That singular sense of purpose has made Frank one of the Nation's preeminent aviation litigators. He is currently co-lead chair of the Plaintiffs' Steering Committee in the TWA 800 multidistrict litigation arising from the explosion of a Boeing aircraft shortly after takeoff from JFK Airport.

In 1978, Frank and co-counsel tried the liability case for plaintiffs in the 1975 crash of Eastern Airlines Flight 66 at Kennedy Airport. Frank

had the unique experience of witnessing the crash while at the airport and 3 years later making plaintiffs' opening statement to the jury. In addition, Frank and his eldest son, Frank III (also an alumnus of St. John's Law School), were members of the successful Pan Am 103/Lockerbie trial team – a verdict of great emotional impact and international significance. Over time, Frank's tenacity has secured tens of millions of dollars in compensation on behalf of the firm's clients.


Blessed with four children – Catherine, Frank III, Nora, and John – and 13 grandchildren, Frank and Betty now reside in Stamford, Connecticut. In their leisure time, Betty gardens and Frank paints (his occasionally whimsical style is widely appreciated). It is easy to see that Frank's strong resolve has enabled him to achieve all of the goals he set for himself as a young man – and much more. 



Kenneth P. Nolan of our New York office has been appointed to the CCH Aviation Law Advisory Council. One of six members, Ken Nolan was named to the

first Advisory Council by CCH Incorporated, the prestigious publisher headquartered in Chicago. CCH publishes Aviation Law Reports, a semi-monthly compendium of caselaw, federal regulations and commentary concerning all aspects of aviation law. Aviation Law Reports is the definitive five-volume treatise regarding all areas of aviation regulation and litigation. Ken Nolan's role on the Advisory Council is to assist CCH in identifying legal issues and trends in aviation law. Ken will be a speaker at the first annual CCH Aviation Law Conference to be held in Chicago.

## \$2.5 Billion African-American Farmers Class Action Progresses

As one of the counsel in the largest discrimination class action in U.S. history, Speiser Krause continues to assist African-American farmers who suffered discrimination at the hands of the U.S. Department of Agriculture. A number of meetings throughout the country, handled by the Metropolitan Washington, DC office in cooperation with several other law firms, allow teams of attorneys and paralegals to interview hundreds of farmers and process their class action claim forms as efficiently as possible. For each farmer, one of two compensation tracks are available, an A track or a B track. Track A farmers, who number around 30,000 claimants, stand to receive \$50,000 tax free. In addition, those Track A claimants who have incurred government debt as a result of the discrimination will be absolved of that debt. Track B farmers who are able to provide evidence of discrimination in excess of \$50,000 will be able to present their cases to a mediator on an individual basis in order to recover their damages. Gerard R. Lear and Daniel D. Barks are coordinating the efforts of Speiser Krause in this litigation. 

## Law Firm Roots - the Old Guard

Over 40 years ago, in June, 1956, a TWA "Constellation" and a United Airlines DC7 collided over the Grand Canyon. Stu Speiser, an ex-Air Force pilot, then a solo practitioner in New York City, was retained by the family of a New Hampshire businessman who was killed in the crash. Faced with the monumental work and expense of proving liability, Stu, who had been appointed chairman of the aviation law section of the predecessor of the Association of Trial Lawyers of America (ATLA), gathered together a group of leading tort lawyers who had cases from the crash and was assigned the task of investigating and preparing the liability phase for all of the cases in the group. From this sprang the concept, which was pioneered by our firm, of consolidating the plaintiff's cases and marshalling resources to create a formidable force to counter the huge resources of the major insurance



Stuart M. Speiser

Charles F. Krause

groups which fund the defense of aviation disaster litigation.

I joined Stu Speiser in 1959, while finishing up at Rutgers Law School, being one of the first jet pilots to become involved in aviation litigation in New York City. Our law practice expanded rapidly, and in 1965, since most of the information concerning the aviation industry emanated from Washington, D.C. through the Civil Aeronautics Board and the then Federal Aviation Agency, we decided to open a Washington, D.C. office. I first met Don Madole, prior to his serving as Chief of the Hearings and Reports Division of the Civil Aeronautics

Board, while in Cincinnati in 1965 attending a CAB hearing where he lead the interrogation of witnesses in another aviation mass disaster. It occurred to me that he might be inter-

Donald W. Madole,  
1932-1996

ested in leaving the government and entering private practice. Don accepted our offer and in 1966 we opened an office in Washington, D.C. in the National Press Building. Don became a key member of the firm dealing with technical matters and he thoroughly enjoyed the investigation and interrogation required in the preparation of the liability phase of an aviation disaster case. He had a lightning-quick mind and loved immersing himself in the details of the frequently complex causations of air disasters. He had been a Navy multi-engine pilot and served many years in the Navy Reserve rising to the rank of Commander. The fact that I was a Marine aviator was tolerated by Don and he enjoyed telling others in my presence that he really wanted to become a Marine, but he failed to do so because his parents were married! Don's sense of humor was legendary among his peers and his play on words was unmatched. For example, while bouncing along in a car on a rough road, he would announce that it was not the car's fault — but the "asphalt". His play on words was often a hurdle one had to overcome to get into a serious discussion. He prided himself on not disclosing confidential disaster investigation information and it was not uncommon for Don, when asked how he was doing, to answer, "I am not at liberty to divulge that."

Don did not, however, let his fun get in the way of the serious business of winning substantial damages for victims of air disasters. He served on, or as chairman of, more air disaster plaintiffs' committees than anyone else perhaps ever has. In addition, in 1980 Don served

on the "Blue Ribbon Panel" appointed by the National Academy of Science to evaluate FAA air worthiness procedures for the Secretary of Transportation. He also served as advisor to the ALI-ABA study on Complex Litigation. Don's contributions to the aviation trial bar were many and with his sudden death in 1996, I lost a wonderful friend who would gladly have given up the proverbial "shirt off his back", if ever needed.



Frank H. Granito, Jr.

In 1967, Frank Granito joined our New York office. Frank's Navy jet pilot background, a stint as an attorney with the FAA and a brief time

working with an aviation defense firm, prepared him well for the plaintiff's aviation bar, where, coupled with his deep empathy for victims of air disasters, he has flourished ever since. Frank has many committee chairmanships and co-chairmanships under his belt, and having recently concluded the Pan Am Lockerbie matter, now finds himself immersed in the preparation of the TWA 800 disaster off Long Island.

This foursome of Stu, Don, Frank and myself set the tone and laid the foundation for our firm which carries through this day. We feel that innovation, along with roll-up-your sleeves hard work, combine to give our clients the kind of lawyering they deserve. No one can turn back the clock to bring home a loved one or alter an injury, but we can effectively enforce their legal claims.

Don's untimely passing, along with Stu and I willingly stepping aside for the new guard, leaves Frank to carry on our tradition along with the second and third generations of pilot-lawyers that serve our clients above and beyond the call of duty.

Charles F. Krause

## Christie Brinkley Helicopter Case Settles

On March 1, 1994, model-actress Christie Brinkley was heli-skiing with friends near Telluride, Colorado. As clouds moved in and the wind increased, the heli-skiing operator decided to try for one more run. As the Aerospatiale/Eurocopter AS 350 helicopter approached a landing site, the aircraft went out of control, spinning into the side of the mountain and tumbling down its slope. Passengers and crew were ejected from the aircraft as it broke apart. Because of the worsening weather and extremely high winds, the passengers were



stranded on the mountainside for six hours. Rescue of all helicopter occupants was accomplished by the Herculean effort of local agencies who succeeded in their mission just before nightfall. One passenger received serious injuries, and all suffered significant physical injuries,

fright, exposure and post-traumatic stress disorder.

Suit was brought on behalf of all four passengers, including Ms. Brinkley. The ski guide company was dismissed, and recovery was made against the helicopter operator and helicopter manufacturer. Amounts of the settlement are confidential by agreement. James T. Crouse of our metropolitan Washington, D.C. office and Kent C. Krause and Paula Walsh of our Texas office represented Ms. Brinkley and the other three passengers in this litigation. ✈

## SilkAir Apparent Suicide

On December 19, 1997, a Boeing 737-300 operated by SilkAir left its cruising altitude of 35,000 feet and crashed in an Indonesian river. The ongoing investigation indicates that a suicidal pilot was at the controls when the 97 passengers and 7 crew members plunged to their deaths. According to observers, simulator trials conducted by Indonesian, Singaporean and Boeing test pilots on the basis of Indonesian radar plots have confirmed that only a deliberate action could have resulted in the descent profile recorded.

A cockpit dialog between the pilot and co-pilot lends credence to the theory that the SilkAir captain was in a position to intentionally disable the cockpit voice recorder (CVR) to cover up his apparent intention to crash the aircraft. The CVR stopped approximately nine minutes before impact and it is believed that it was deliberately turned off or disabled. In addition, no part of the descent, which was believed to have hit transonic speeds and ripped the wingtips from the aircraft, was recorded by the digital flight data recorder (DFDR).

Speiser Krause represents the families of 27 decedents on board SilkAir Flight 185. John J. "Jack" Veth of Speiser Krause's California office has already negotiated settlements on behalf of 17 clients of our clients. ✈

## Navy Bomb Kills Civilian

Fatal errors by an F/A-18 pilot and a ground control officer lead to the death of 35-year old David Sanes Rodriguez on the island of Vieques, Puerto Rico on April 19, 1999. Mr. Rodriguez was a civilian security guard stationed atop an observation tower overlooking a firing range at Camp Garcia. Reports issued by the Navy indicate that the marine pilot in control of the aircraft became disoriented after takeoff from the USS John F. Kennedy, and mistook the observation tower for the intended target during a bombing exercise. Two 500-pound MK-82 bombs were dropped near the tower, one of which exploded less than 30 feet away, killing Rodriguez. The Navy reported that a ground control officer cleared the pilot to drop the bombs without making visual contact with the aircraft, contrary to Navy rules and procedure. The estate of Mr. Rodriguez is represented by Leigh J. Ballen of our metropolitan Washington, D.C. office. ✈

## TAM Flight 402— Faulty Thrust Reverser Deploys During Flight

On October 31, 1996 a Fokker 100 aircraft operated by TAM Airlines of Brazil took off from Congonhas Airport in Sao Paulo, Brazil enroute to Rio de Janeiro, Brazil. Moments after takeoff, the left-side thrust reverser engaged while the aircraft was climbing out, causing a violent departure from normal flight. The plane crashed into a residential area of Sao Paulo, killing all 90 passengers and 9 crew members. The thrust reverser was manufactured by Northrop Grumman, headquartered in Los Angeles, California. Litigation was filed by Speiser Krause in California state court against Northrop Grumman, and in New York state court against TAM Airlines and Fokker.

Speiser Krause represents 65 of the 90 passengers aboard this aircraft. Joseph T. Cook is handling this matter in California; Frank H. Granito, III in New York; and Gerard R. Lear and Leigh J. Ballen in the metropolitan Washington, D.C. office. ✈

## Swiss Air Flight 111 Cases Filed

Our firm represents 36 victims of Swissair Flight 111 which crashed on September 2, 1998 near Peggy's Cove, Nova Scotia. The Judicial Panel for Multi-District Litigation has consolidated all actions before Chief Judge Giles in Philadelphia. Kenneth P. Nolan, Frank H. Granito, Jr. and Frank H. Granito, III have been appointed to the Plaintiffs' Steering Committee which will handle all liability discovery and trial on behalf of all the families.


The MD-11 plane crashed in Canadian waters after a fire and smoke condition caused the pilots to attempt an emergency landing at Halifax airport. Before reaching the airport, the electrical systems shut down ostensibly due to the fire which started in the area above the cockpit. The primary defendants

include Swissair, which operated the plane, McDonnell Douglas, the manufacturer, and Interactive Flight Technologies, Inc., which developed the inflight entertainment system which has also been mentioned as a possible cause of the smoke and fire condition. Although the Canadian Transport Board has not completed its work, their investigation is focusing on the actions of the crew in not appreciating the danger of the smoke condition and the wiring of the MD-11 which may have been the cause for the smoke and fire which incapacitated the operating systems of the plane.

Our firm has hired experts in both areas: those with expertise in the operation of the MD-11 and those with knowledge of the wiring systems. Since some of the corporations

which installed and/or manufactured the inflight entertainment system are California corporations, all lawsuits will be brought within the one-year anniversary date which is the statute of limitations in California.

Swissair and McDonnell Douglas has announced an agreement to pay compensatory damages to all families. Whether that is a serious offer or a mere public relations ploy remains to be seen.

This case is being handled by Frank H. Granito, Jr., Kenneth P. Nolan, Frank H. Granito, III and John J. Halloran of the New York office and Gerard Lear, Leigh J. Ballen of the Metro D.C. office and Juanita M. Madole in California. 

## KAL 801 Discovery Continues


On August 6, 1997, a Boeing 747-300 operated by Korean Air Lines as KAL Flight 801 crashed on approach to runway 6 Left at the Guam International Airport on the island of Guam. The aircraft had departed Seoul, Korea with 254 passengers and crew. As a result of the crash, 225 individuals lost their lives and twenty-nine survived with various degrees of personal injury. Speiser Krause represents the crewmembers and families of over 50 occupants.

The Honorable Harry L. Hupp of the Central District of California has been selected as the trial Judge for the liability phase of the litigation. Juanita M. Madole of Speiser Krause's California office was selected by the court as Plaintiffs' Liaison Counsel; and, John J. "Jack" Veth, also from the California office, was selected as a member of the Plaintiff's Steering Committee. Along with members from other firms, Mr. Veth and Ms. Madole have engaged in damage and liability discovery over the past year. Depositions have been taken on Guam, in Hawaii, in California, and

in Washington, D.C.


Korean Air Lines's liability stems from the conduct of the pilot and first officer in that they descended below published minimum altitudes and allowed the aircraft to impact terrain. In addition, the theory of liability against the United States Government is based on the conduct of the air traffic controller who failed to warn the aircraft that it was descending below the published altitude despite the fact that his radar scope accurately represented the aircraft's flight path. The United States of America is also liable, according to the Plaintiffs' Steering Committee, for its failure to maintain the radar Minimum Safe Altitude Warning (MSAW) system properly. The MSAW system is designed to provide an alert to the controller if an aircraft descends below a safe altitude. Errors made during the installation of the MSAW software in the early 1990s were never corrected.

The plaintiffs are also pursuing a theory of liability against Serco Management Services Corporation which provides contract tower oper-

ators to the FAA at various locations including Guam. A Serco employee was manning the tower at the time of the crash and failed to relay pertinent weather information to the flight crew. 

## TWA 800 continued from page 1

Defendants initially sought application of the Death On the High Seas Act (DOHSA) on the issue of damages. This law would have limited plaintiffs' recovery to their pecuniary loss. Judge Sweet, however, agreed with our contention that DOHSA was inapplicable because the crash did not occur on the high seas within the meaning of the statute, but, rather, within the territorial waters of the United States. The defendants have appealed Judge Sweet's decision to the 2d Circuit Court of Appeals, and oral argument is scheduled for the Fall.

The National Transportation Safety Board (NTSB) is nearing the end of its investigation, and we expect the Board to issue its findings in the Fall of this year. 

## A Lawyer's Finest Reward


Daniel D. Barks and Leigh J. Ballen, associates in the Metropolitan Washington, D.C. Speiser Krause office, successfully handled a products liability action involving a young man who was injured when the bike he was riding collapsed. The suit was filed in the United States District Court for the Eastern District of Virginia. After less than six months of litigation, the case was concluded during a settlement conference held before the Honorable Judge Robert Payne, wherein John J. Halloran, the firm's newest partner, as well as Dan and Leigh were able to obtain a successful resolution. Charlotte Jensen, wife of the injured Mr. Jensen, sent the following comments to Charles F. Krause:

"You will probably never know me, Mr. Krause, and under ordinary circumstances, I doubt I would've ever heard of Speiser Krause. Unfortunately, my circumstances aren't so ordinary, and I



*Mr. and Mrs. Dennis Jensen*

know more about Speiser Krause than an everyday person like myself ever should. Last Christmas, my husband had an awful bike accident...his six-week-old bike collapsed underneath him, leaving him with injuries that would require him to have metal plates placed in his head. I believe in God, and I believe that there is a purpose for everything that happens to us, but I cannot understand why my husband deserved this awful fate. I've tried for nearly a year to understand the purpose of this tragedy and constantly come up with nothing. I will

never understand why my family was forced to endure such a tragedy...at Christmas of all times...but I do know that I could not have gotten through this without the kindness of Dan Barks and Leigh Ballen. I don't know how it is that these two gentlemen ended up at your law firm, but I do know that my life will never be the same because of them. At the lowest point in my life Dan and Leigh have been there for me, as friends and as darn good attorneys, too. When I go to sleep at night, I pray for Dan and Leigh in the same way as I do the rest of my family...that must tell you how important they are to me. My purpose of this email is just to let you know that you have two exceptional people on your team, and my heart nearly bursts when I think of the positive impact they have had in my life. Because of them, I will never be the same, and I just wanted you to know." 

## SPEISER KRAUSE

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