

Precedent

OFFICES

NEW YORK

Two Grand Central Tower
140 East 45th Street
34th Floor
New York, NY 10017-3144
(212) 661-0011
Fax: (212) 953-6483

METRO WASHINGTON DC

2300 Clarendon Boulevard
Suite 306
Arlington, VA 22201
(703) 522-7500
Fax: (703) 522-7905

CALIFORNIA

One Park Plaza
Suite 470
Irvine, CA 92614-8520
(949) 553-1421
Fax: (949) 553-1346

TEXAS

Three Lincoln Centre
900 Jackson Street
Suite 750
Dallas, TX 75202
(214) 752-4664
Fax: (214) 752-4774

FLORIDA

Miami Center – 10th Floor
201 South Biscayne Boulevard
Miami, FL 33131-4327
(305) 375-9400
Fax: (305) 375-0337

Loss of Learjet 35, N47BA

On October 25, 1999, the crash of a Learjet 35 near Mina, South Dakota claimed the lives of Ivan N. M. Ardan, Bruce E. Borland, Robert E. Fraley, W. Payne Stewart and the two crew members. Speiser Krause represents the families of Payne Stewart, the world famous golfer, Robert Fraley and Van Ardan, CEO and President, respectively, of Leader Enterprises, a sports management company which represented many major sports figures.

Over the past year, the families have waited for the National Transportation Safety Board (NTSB) to complete its investigation. The release of the NTSB Factual Report on September 27, 2000 and the NTSB hearing on November 28, 2000 indicates that the government investigation is drawing to a close.

While the families were hopeful that the NTSB would be able to determine the cause of the crash, the Factual Report issued by the NTSB leaves many questions unanswered. In addition,



the families recognize that there is very little possibility that the results of the ongoing FBI inquiry will be made available to them at any time in the foreseeable future, if at all.

The families recently initiated judicial proceedings against the owner and operator of the aircraft. Legal actions on behalf of the survivors of Ivan N. M. Ardan, Bruce E. Borland, Robert E. Fraley and W. Payne Stewart were filed on Wednesday, October 25, 2000, in the Circuit Court of the Ninth Judicial Circuit for Orange County, Florida, against the operator, Sunjet Aviation, Inc., and the owner, Jet

Shares One, Inc. Hopefully, the judicial process will shed additional light on what really happened during the ill-fated flight of October 25, 1999. As the litigation progresses, it is anticipated that additional defendants will be added.

Gerard R. Lear, and Daniel D. Barks of the Speiser Krause Metropolitan Washington, DC office and Frank H. Granito, Jr. of the New York office represent the Ardan, Fraley and Stewart families along with our Florida counsel, Terry C. Young and H. Gregory McNeill of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Orlando, FL. ✈

Profile

KENNETH P. NOLAN



Kenneth P. Nolan, managing partner of the New York office of Speiser Krause, started his career working for The New York Times as a copy editor for the editorial and op-ed pages and also as a reporter. The valuable lessons learned in editing and writing often under deadline later served him well as an editor-in-chief of *Litigation Magazine*, the leading publication of the American

Bar Association. A 1977 graduate of Brooklyn Law School, Mr. Nolan was admitted to the New York bar in 1978 and as a member of Speiser Krause has been active in aviation, medical malpractice and general tort litigation ever since. His quick wit and good-natured Brooklyn banter serves not only to disarm his adversaries but to charm those whom he holds dear as friends. In addition, Ken is valued by partners and clients alike for his ability to cut through to the real issue in any discussion.

Mr. Nolan is a prolific author of legal articles on aviation law, personal injury and general trial techniques. His writing expertise has been nationally recognized and in addition to his past leadership of *Litigation*, he is a member of the

Board of Editors of the New York State Bar Journal and a member of the CCH Aviation Law Advisory Counsel.

Ken has effectuated numerous multi-million dollar recoveries on behalf of Speiser Krause clients. Over the past several years, he has recovered more than \$20 million dollars for a client who survived a commuter airplane crash and has successfully litigated more than 80 other cases at values in excess of \$1 million dollars each. He and his wife Nancy have 4 children and live in Brooklyn and Shelter Island, NY. ✈

Tobacco Smuggling into the Republic of Colombia

The firm is currently representing several Departments of the Republic of Colombia in their action against Philip Morris in Brooklyn federal court.

On May 19, 2000, the Departments filed a complaint alleging that the Philip Morris companies have been involved in a massive, ongoing conspiracy to smuggle tobacco products into the Republic of Colombia. One publication, *Money Laundering Alert*, described the case as follows: "The complaint must rank as one of the most damning federal court documents ever filed against a Fortune 500 company. In 74 pages, it accuses Philip Morris of leading a long-standing conspiracy whose purpose was to smuggle billions of cigarettes into Colombia to evade payment of billions of dollars in customs duties and other levies to which legitimately imported cigarettes are subject."

The complaint also alleges that

the smuggling activities are part of a money laundering/narcotics trafficking scheme which the U.S. calls the Black Market Peso Exchange (BMPE). Simply put, the BMPE is a scheme whereby cash generated by narcotics sales in the U.S. is laundered through the purchase of cigarettes, which are smuggled into Colombia. The U.S. Treasury Department has said that the BMPE is "perhaps the most damaging and dangerous form of money laundering" that the U.S. has encountered. Accordingly, the United States as well as the Departments of the Republic of Colombia all have a powerful interest in stemming such illicit conduct. In order to end the smuggling scheme, and secure compensation for their losses, the Departments are seeking injunctive relief and monetary damages.

The case is pending and the parties are engaged in pre-trial proceedings. John Halloran, a former Justice Department lawyer and

partner in the NY office, is handling the case, along with Frank H. Granito, Jr., and Frank H. Granito III of the NY office. ✈

US Navy Settles Bombing Case

The inhabitants of Vieques Island, Puerto Rico have protested the United States Navy's presence and live-fire bombing exercises on the island for decades. In April 1999, a civilian security guard was killed when a marine pilot mistook an observation tower where he was stationed for a target during a bombing exercise. Gerard R. Lear and Leigh J. Ballen of our metropolitan Washington, DC office obtained a substantial confidential settlement from the US Navy on behalf of the survivors less than one year after the incident occurred. ✈

Pigford Class Action Enters Growing Season

Speiser Krause continues in its role as class counsel this fall in *Pigford, et al. v. Glickman*, the largest civil rights class action in the history of the nation. The case, brought on behalf of black farmers who suffered discrimination by the United States Department of Agriculture (USDA) through denial of farm credit, settled last year after the parties stipulated to a structure for resolving claims. Approximately 25,000 eligible class members had an option of pursuing Track A for liquidated damages based on substantial evidence of discrimination, or Track B for actual damages, based on a civil preponderance burden of proof. The firm's Metro Washington, DC office, working in coordination with several other law firms throughout the South, assisted over 3500 class members with the Track A process. Track A has already awarded over \$700 million to successful claimants and Speiser Krause had the highest success rate of all class counsel. The firm also represents forty-four Track B claimants, a larger number than any other law firm involved in the class action.

A number of Speiser Krause attorneys and affiliated counsel are presently engaged in the prosecution of the Track B claims. The firm's *Pigford* counsel team is headed by managing partner Gerard R. Lear of the Metro Washington, DC office. Daniel D. Barks, of the same office, has been involved in the case since its inception with Chad B. Hess and W. Scott Husing handling both Track A and Track B claims. The firm has also retained Patrick M. O'Brien, a thirty year veteran of the USDA, to calculate damages in Track B claims.

The Track B process is analo-




Chad Hess and James Lyle standing on the remains of the Lyle farm.

gous to trial before a federal magistrate. Cases are tried before a neutral arbitrator who applies federal rules of civil procedure and evidence. Prior to trial, discovery provides for depositions and requests for documents, and a number of motions and pre-trial hearings typically occur. Direct testimony and legal briefs are presented in written form leaving cross-examination and oral argument for the trial. Damages in Track B claims vary depending upon the individual case, but virtually all claims exceed \$500,000, and many exceed \$1 million.

Virginia claimant, James H. Lyle, commented early on in the *Pigford* litigation, "We didn't even realize it was discrimination at the time. It was the only way of life we had ever known in the black community."

The *Pigford* case presents a unique opportunity for Speiser Krause to play a critical role in the most significant class action in the


history of civil rights. For many of the *Pigford* claimants, this case represents the first time in their lives that someone has called them "Sir" or "Ma'am" or entered their homes for purposes other than to collect or demand payment. Mr. Hess recalls a claimant that he visited in his shanty in rural North Carolina. The man had stormed the beach at Normandy only to return home to a government that would later take his farm from him. When Mr. Hess told him to hold hope that his claim would be approved, the man responded, "Chad, I don't give a damn if I ever get a penny from the settlement. I just want you to know that I will never forget you comin' out here to see me." 

Alaska Airlines Flight 261 in Litigation

On January 31, 2000, 83 passengers and 5 crew members were killed when Alaska Airlines Flight 216 crashed into the Pacific Ocean near Point Mugry, CA.

The Multi District Litigation panel has consolidated all actions before Judge Charles Alexander Legge, District Court Judge in the Northern District of California.

John J. "Jack" Veth, a partner in the California office, has been nominated as a member of the Plaintiffs Steering Committee which will have the responsibility to conduct all pre-trial discovery. In addition to Alaska Airlines, the Boeing Company has been named as a defendant. As the litigation develops, it is anticipated that additional subcontractors will also be named as defendants.

It is anticipated that work on this case will continue through the year 2001. 



SPEISER KRAUSE IS PLEASED TO ANNOUNCE THAT MARY C. SWEENEY CONCENTRATING IN AVIATION LITIGATION, MEDICAL NEGLIGENCE AND PRODUCTS LIABILITY HAS BECOME ASSOCIATED WITH OUR FIRM.

KAL 801 in Settlement Negotiations

The California office is now completing the settlement of claims arising from the crash of a Korean Air 747 at Agana, Guam on August 6, 1997. Juanita M. Madole and John J. Veth were both members of the Plaintiffs' Steering Committee which established liability approximately two years after the fiery crash into Nimitz Hill. The defendants are Korean Air, the United States of America (for negligence by the Federal Aviation Administration), and Serco Management Services, Inc. (the company that operated the contract tower facility at Agana).

The glideslope function of the ILS approach was not functioning on the night of the accident and that fact was known to the KAL crew. However, unknown to the crew of the accident aircraft, the Minimum Safe Altitude Warning had been disabled. It was designed to warn the controllers by aural and light warnings whenever an approaching aircraft flew below the minimum safe altitudes within a 55 mile radius of the airport. Due to a mistake by a computer specialist, it was only engaged at the 54-55 mile radius, too far from the airport to do any good. The error had not been remedied in several inspections of the facility in the two years before the accident.

The claims against the Serco tower controller centered on the delay in advising emergency personnel about the accident. There were 30 survivors and it is unknown how many more could have been saved if he had acted promptly. The claims are pending in the Central District of California before Judge Harry Hupp, who has ruled that Guam law be applied to liability issues, which means full compensation for both pecuniary and non-economic damages.

Speiser Krause represents the families of 56 passengers. Settlement discussions are ongoing.

Egyptair – Flight 990 Discovery Continues

Egyptair Flight 990 which crashed off Nantucket Island on October 31, 1999 has been consolidated before Judge Frederic Block in the Eastern District of New York, which is located in Brooklyn, New York. Kenneth P. Nolan is a member of the Plaintiffs Steering Committee and active in the litigation. We presently represent 15 families and expect to be retained by others. There are a number of legal and factual issues including whether the First Officer was responsible for the crash of the plane or whether it was a mechanical failure which led to this terrible

tragedy. We are in the process of taking depositions of Egyptair's personnel and others who may have knowledge of these facts. In addition, we are researching several legal issues including jurisdiction over Egyptair under the Warsaw Convention. Just recently, Egyptair agreed that they would adhere to the IATA Agreement which would allow us to recover against Egyptair unless they prove they took "all necessary measures" to avoid the crash. Since at one point immediately prior to the crash, there was only one crew member in the cockpit, we believe

that no matter what the cause, Egyptair cannot prove that it took all necessary measures to avoid the crash. The application of IATA is a significant victory for the families and should shorten the litigation considerably. We are presently engaged in discovery on this and other factual and legal issues.

Kenneth P. Nolan, Frank H. Granito, Jr. and Frank H. Granito, III of our New York office along with Daniel D. Barks of our Virginia Office are involved in this litigation.

SK Handles One of the Ten Most Important Civil Trials of the Millennium

Speiser Krause was recognized for their success on behalf of plaintiffs in *Harkness v. Trans World Airlines* (1958) in the March 2000 issue of *Trial Magazine*. As a result of this case, our firm had the opportunity to forever affect the way complex, multi-district litigation is handled on a practical, everyday basis. The following is an excerpt from the *Trial Magazine* article discussing the case:

Following World War II, greater air travel resulted in more aviation accident litigation. Plaintiff lawyers approached these suits with a perfectly respectable theory: *res ipsa loquitur* – planes don't fall from the sky without some negligence. Juries, however, were not swayed by this evidentiary shortcut, not after the airline's presentation of the ultra-modern equipment and extensive training

given to their pilots. In the early 1950s, 22 of 24 aviation lawsuits tried under this theory resulted in defense verdicts.

The problem, thought then fledgling aviation lawyer Stuart Speiser, was that the lawyers representing crash victims and their families were trying to go it alone. Few firms could afford the technical expertise required to build a good case, they did not share information, and they were often unaware of legal developments in related cases around the country. One of the worst airline disasters in history gave Speiser the opportunity to make a dramatic change.

On June 30, 1956, two airliners crashed over the Grand Canyon, killing 128 people. At Speiser's invitation, 25 lawyers representing victims and families met and agreed to

coordinate the work of case preparation, dividing tasks and sharing information. Each lawyer paid into an expense fund. Speiser maintained a document library and circulated a newsletter to keep the group informed of the latest developments.

The results were dramatic. The first case was tried by Mel Belli and Speiser. In November 1958, a Los Angeles jury returned a verdict against the two airlines, TWA and United. Plaintiffs won most of the Grand Canyon cases after that. ✈

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Swissair – Flight 111, Near Peggy's Cove, Canada – Settlement Negotiations Begin

Following crucial discovery, Swissair's insurers finally agreed to settlement negotiations and approximately one-half of our 37 cases have been settled. The case is consolidated in Philadelphia before Chief Judge Giles. The discovery, including our inspection of other Swissair MD-11s in Zurich, made apparent the fact that the wiring on the MD-11s was deficient. Ken Nolan of our New York office visited the Swissair facility in Zurich, and reported that there was little doubt that the wiring was frayed and sub-

standard. We believe that this wiring caused a fire which cut off all electrical control within the aircraft causing it to crash.

This inspection and the documents obtained through discovery have also made it clear that both the manufacturer, McDonnell Douglas, and the air carrier, Swissair, were responsible for the tragedy which claimed 230 lives. Even though the issue of liability remains technically open, the emphasis has turned to damage discovery since Swissair has indicated a willingness to discuss res-


olution of all cases. We are now compiling damage information for the purpose of resolving the cases either through settlement or a damage trial.

Kenneth P. Nolan and Frank H. Granito, Jr. are members of the Plaintiffs Steering Committee and along with Frank H. Granito, III of the New York office and Leigh J. Ballen of our Virginia office, have been working diligently on this litigation. ✈

Be sure to visit our website at
www.speiserkrause.com

Obstetrical Malpractice Case Results in Multi-Million Dollar Settlement

This obstetrical malpractice case resulted in a multi-million dollar settlement on the eve of trial. The infant was born in Hospital "B" and as a result of oxygen deprivation during birth now has multiple handicaps. The malpractice lawsuit alleged that Doctor "C" failed to monitor the mother during labor and that the nursing staff did not timely inform the doctor of problems with the fetal heart rate. This medical malpractice settlement is one of the largest in that particular area of New York City and resulted in a structured settlement which will pay the infant more than \$47 million over her life. In addition, to enabling the provision of whatever medical care is necessary for the infant, the family will be able to purchase a home which will be wheelchair compliant, as well as a van with a hydraulic lift. The names of the parties and the amount of the settlement are confidential.

This matter was litigated by Kenneth P. Nolan of our New York office. 

A Lawyer's Finest Reward

David Mestre sent Flor Melgar of our New York office the following letter as a thank you for all her hard work in handling his mother's case which arose from the American Airlines Flight 965 crash in Cali, Columbia of December 20, 1995.

....Flor, I believed that from the day of the accident that my life as well as my family's was going downward in all aspects. Thank you for everything you have done for me and my family. There is absolutely no words in this world that we can think of that can describe you. Flor, you have been an angel to us. Thank you from the bottom of my heart. I know that my life as well as my family's will never be the same because of you.

David Mestre

SPEISER KRAUSE

2300 Clarendon Boulevard
Suite 306
Arlington, VA 22201