

Precedent

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SPEISER KRAUSE

is pleased to announce that

James E. Hall

Former National Transportation Safety Board Chairman

has become associated with the firm's

Metropolitan Washington, DC office



Jim Hall has recently agreed to serve as a special consultant to SK on aviation-accident investigations. One of Hall's first assignments with the firm will be to assist in the representation of family members of several of those who lost their lives in the January 8, 2003 crash of US Airways Express Flight #5481 in Charlotte, NC.

Hall, who for six years headed up the independent federal agency responsible for investigating accidents, will bring an unprecedented level of expertise to Speiser Krause. Jim did a tremendous amount to advance the cause of aviation safety while he was at the NTSB. He tirelessly promoted change to make aviation and other forms of transportation safer. And he was one of the major proponents of the Aviation Disaster Family Assistance Act of 1996.

Profile

FRANK H. GRANITO, III



Frank H. Granito, III, is the partner who for the past 15 years has practiced in the New York office with his father, the firm's senior attorney of the same name. The

similarity of their names and the fact that they often share responsibility in cases occasionally causes some confusion, usually with the result that the elder takes calls intended for the younger Granito. But, on the whole, our clients seem to be satisfied with the arrangement because there's always a Granito to take their calls.

Frank III received his undergraduate degree in 1981 from Franklin & Marshall College in Lancaster, Pennsylvania where he also enjoyed an outstanding football career as a wide receiver. Frank then went to work with Pilgrim Airlines as a station manager at Kennedy and LaGuardia Airports where he met Monica Marino, his future wife.

After graduation from St. John's University Law School in 1987, Frank decided to follow in his father's path

as a trial attorney and joined Speiser Krause just in time to play a vital role in the litigation arising out of the Pan Am Flight 103 Lockerbie Air Disaster. After a 13-week trial resulted in a verdict of wilful misconduct against Pan Am, which was affirmed on appeal, Frank assumed primary responsibility for concluding the firm's 51 passenger death actions and for prosecuting the actions by the Lockerbie plaintiffs against Libya under the Anti-Terrorism Act enacted in 1996.

Frank then took on the responsi-



Frank H. Granito, Jr. and Frank H. Granito, III (right) walking into court in Scotland for the first day of the Fatal Accident Inquiry in the Pan Am 103 case.

bilities of Co-Liaison Counsel and Committee Member in the litigation arising out of the crash of TWA Flight 800 on July 17, 1996 and led the SK effort which resulted in the recovery of almost \$125 M on behalf of the firm's TWA 800 clients which included, among others, the claims of the families of the 16 French Club students and their chaperones from the Montoursville High School in Pennsylvania.

In addition to litigation arising out of the crash of SwissAir Flight 111 off the coast of Nova Scotia and the EgyptAir crash in the North Atlantic, Frank's current duties involve claims arising out of the terrorist attacks of September 11th as well as lead counsel in actions pending against Executive Jet Airlines and British Aerospace as a result of the crash in Scranton, Pennsylvania of a chartered Jet Stream 31 aircraft that resulted in the deaths of 17 passengers and 2 crew.

A member of the New York and New Jersey bars, Frank is a frequent guest speaker on aviation law and has written extensively on subjects relating to air disaster litigation. He is also the former Chairman of the ABA's Air and Space Law Committee.

Frank lives in New Canaan, Connecticut with his wife, Monica and their five children. ✈

Mechanic's Error in Crash of USAIR #5481 in Charlotte, NC

On January 8, 2003, a US Airways Express Flight #5481 crashed at Charlotte-Douglas International Airport in Charlotte, North Carolina killing all 19 passengers and the two pilots on board.

According to testimony received during a recent two-day NTSB Hearing, although the plane was overweight and tail heavy as it

left the runway, it still might have completed the flight to the Greenville-Spartanburg Airport in South Carolina had it not been for a mechanic's mistake two nights before the crash. Investigators determined that the tension in the cables connecting the control column to the elevators was not properly set, resulting in the inability of the crew to compensate for the aft

overweight condition by pushing the nose forward as the aircraft entered a severe stall.

Speiser Krause currently represents the families of three victims of the Flight #5481 crash. This case is being handled by Gerry Lear, Mary Sweeney and Luke Marsh of the Virginia office as well as Ken Nolan of the New York office. ✈

Compensating the 9/11 Victims of Terror: A Continuing Battle

As we near the second anniversary of the terror attacks of September 11th, we continue to represent the victims of the attacks and their families on three fronts: in claims to the September 11th Victim Compensation Fund; in civil litigation against the airports, airlines and other negligent defendants; and in litigation against the terrorists who perpetrated the attacks, and those who supported them.

Our firm represents more than one hundred families of the terror attacks, most of whom continue to weigh the options of entering the Victim Compensation Fund or commencing litigation. The Fund's Special Master continues to be non-committal in describing the general methods by which Fund awards will be calculated. In order to remove some of the uncertainty and help our clients make an informed decision before committing to either remedy, we have been preparing informal submissions to the Special Master that outline the economic and emotional damages suffered by these families as a result of the attacks. We have sat down individually with Mr. Feinberg and our clients, and based upon our submissions and further discussion held at these meetings, the Special Master has provided our clients with a range within which they can expect their Fund award to fall. Based upon these figures, our clients are considering whether the Fund or civil litigation is a better remedy for their families.

Recently, lawsuits were commenced against the Special Master, challenging the methods by which Fund awards will be calculated, and seeking to strike certain aspects of the Fund's regulations as improper. The cases were assigned to Judge Alvin K. Hellerstein in the Southern District of New York, before whom the September 11th negligence litigation is already pending. The crux of the argument rested upon the use of


the term "need" in calculating awards. The federal government appeared in those cases to defend Mr. Feinberg's method, and asked the Court to dismiss the suits. As we expected, Judge Hellerstein did just that. He ruled essentially that the federal government had vested in the Special Master broad discretion, and the subjective consideration of a victim's families' need was not an abuse of that discretion. While we disagree with Judge Hellerstein's ruling, he is and has been eminently fair in matters relating to 9/11. We suspect that his was a policy based decision designed to encourage the 9/11 families to commit to the Fund or litigation as is, rather than prolonging the process and forcing the families to wait for the drafting of new regulations before making their decisions.

To date, very few victims or their families have chosen to participate in the negligence litigation against the airports, airlines and related defendants. Most still await more information as to what they can expect to receive from the Victim Compensation Fund. Ordinarily, the statute of limitations in a wrongful death action in New York is two years, expiring on the second anniversary of the attacks. Recognizing that the uncertainty surrounding the Fund might put some families up against this deadline and force their decision without full information, Governor Pataki and the state legislature have agreed that the statute of limitations for actions arising from the September 11th attacks should be extended six months to March, 2004. Thus, the 9/11 families can make an informed decision whether to enter the Fund or litigation, without having the two year deadline make the decision for them.

Virtually all defendants in the negligence litigation, the Port Authority, the airports, airlines, security companies and others, have asked Judge Hellerstein to dismiss the actions against them. Most of

these motions were made relative to the victims of the terror attacks who were on the ground rather than on the hijacked aircraft. These defendants claim that in complying with all federal security regulations they were not negligent, and further that the hijacking of an aircraft for the purpose of crashing it into a crowded building was just not foreseeable. As members of the executive plaintiffs' committees that drive this litigation, we have opposed the motions. We anticipate that Judge Hellerstein will decline to dismiss most of these actions, in that it is premature to rule on the reasonableness of the defendants' conduct or the foreseeability of the victims. Instead we expect to engage in vigorous liability discovery, as Judge Hellerstein has made it clear that he expects these actions to proceed at an accelerated pace.

Finally, we continue to participate in the litigation that has been commenced against the terrorists responsible for the attacks and the countries and entities that sponsored them. The terrorist litigation had been assigned to Judge Allen Schwartz, also in the Southern District of New York, until his sudden and tragic death in March, 2003. The cases have been reassigned to Judge Robert Casey, and he has held the first conference for May 30th. Judge Casey has directed the methods by which the plaintiffs must serve the terrorist defendants and set up a preliminary schedule for serving pleadings and preliminary discovery demands.

The New York and Virginia offices have joined forces to represent the families of the September 11th victims. In the New York office, these cases are being handled by Ken Nolan, Frank H Granito, Jr., Frank H. Granito, III, John Schutty and Jeanne O'Grady. In Virginia, Gerry Lear, Mary Sweeney, Luke Marsh and Cory Loudenslager are actively representing these families. 

Creative Lawyering Results In Multimillion Dollar Settlement In Complex Obstetrical Malpractice Case

A Speiser Krause team, led by New York's Ken Nolan and Christina Fry Washington D.C. based co-counsel David Fensterheim of Fensterheim & Bean, P.C., recently obtained a multimillion settlement in an obstetrical malpractice case on behalf of the family of a mother who died from complications of preeclampsia. As a result, each of her three children, and their father, will receive millions in future payments for educational, and other needs.

The previously healthy mother was in the later stages of a seemingly normal third pregnancy when she was rushed to a New York hospital with seizures. She died several hours later. A healthy baby boy was delivered by C-section.

The family was from the Washington D.C area and mom and the kids were visiting relatives in New York at the time. She had just recently received a clean bill of health and permission to travel to New York from her D.C. area obstetrician. A few days later, she was in the hospital fighting for her life.

Preeclampsia -- or pregnancy induced hypertension (high blood pressure) is a very serious, but rela-

tively common disease of pregnancy, the cause of which is generally considered a mystery. It is relatively simple to detect if good prenatal care is obtained. While potentially fatal if left untreated, it is rarely so today, because of modern methods of detection and treatment. The only known "cure" is termination of the pregnancy, hopefully through delivery of the baby.

In this case, our investigation revealed that mom was the victim of two unfortunate instances of medical negligence, which combined to cause the fatal result. First, her D.C. area physician missed certain subtle warning signs of the disease. Second, once she arrived at the New York hospital with a full blown case of the disease, her doctors failed to appreciate the seriousness of her complicated case and allowed her to deteriorate until it was too late.

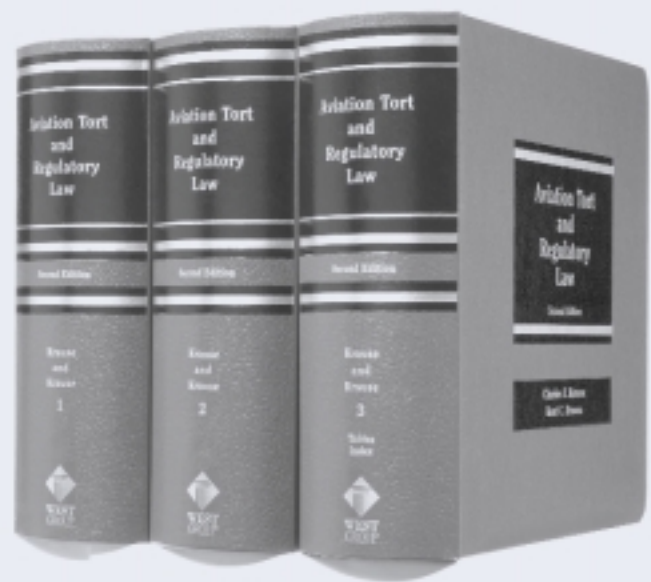
The case presented some interesting legal and strategic considerations, which put the talents of the SK team to the test. Because of the multi-jurisdictional nature of the case (prenatal care in one state and hospitalization and death in another), it was necessary to bring two separate lawsuits. Since all of the defendants

could not be brought together into the same courtroom, this gave the New York defendants the opportunity to point the finger at the D.C. area obstetricians ("she was already in critical condition when she arrived here; we did what we could to save her") and gave the D.C. area doctors the chance to point the finger the other way ("the warning signs were very subtle and even if we missed them, the real cause of death was the negligence of the New York doctors"). This is a common defense tactic often called "the empty chair defense." It is the reason why, in order to ensure that all possible defendants are before the jury, that plaintiff's lawyers generally name multiple defendants in a typical case. In this case, however, that was not possible.

Through a creative trial and settlement strategy, which included careful timing of the two cases, the utilization of separate medical experts to concentrate on different aspects of the case, and the use of multiple pretrial motions challenging various items of the defendant's potential evidence, the SK team was able to overcome these obstacles and obtain its successful result. ✨

Did You Know...

that The West Group recently published the latest edition of Aviation Tort and Regulatory Law, 2d. by Chuck Krause and his son, Kent C. Krause. This 3-volume set replaces the original Aviation Tort Law by Stu Speiser and Chuck Krause which was first published in the 1970's.



Developments in AA Flight 587

The litigation concerning this crash which occurred on November 12, 2001 in Belle Harbor, Queens continues. Our firm represents 40 passengers who perished aboard American Airlines Flight 587, as well as two families who lost loved ones when the aircraft slammed into their homes.

Ken Nolan is co-lead Chair of the Plaintiff's Steering Committee which is litigating the action against Airbus and American Airlines before Judge Robert Sweet in the U.S. District Court, Southern District in Manhattan.

As a result of our legal work and the depositions taken of both American and Airbus, a funding agreement has been entered into by these defendants. This means that both American and Airbus will agree to begin settlement negotiations. We

will present test cases to determine if the defendants will fairly compensate the families. If the test cases are successful, we will attempt to obtain settlement offers for all those devastated by this tragedy.

The depositions taken were of both American and Airbus personnel. American Airlines' employees were questioned concerning the company pilot training program. The focus was that their training program overemphasized the use of rudder to control the plane. One theory is that the First Officer pushed back and forth on the rudder five or six times which overstressed the tail section, causing it to break off. Some American pilots were critical of the manner in which the use of rudder was being taught to its pilots and we have obtained written documents wherein

American pilots criticized American's training procedures.

We have also questioned Airbus engineers in Paris. Apparently, the engineers knew that the Airbus had problems with its rudder and that there were previous aviation incidents which caused substantial stress to the tail section. Airbus did not adequately warn American that overuse of rudder could cause the tail section to break off as illustrated by a 1997 flight where pilot overuse of the rudder caused a crack in the tail. Airbus did not warn the airlines of this incident or the potential problem.

Along with Ken Nolan of the New York office, Frank H. Granito, III, Jeanee M. O'Grady, and Francelina M. Perdoma are also assisting with this complex litigation. ✈️

Settlement Negotiations in Alpine Conclude Moments Prior to Oral Argument on Jurisdictional Motion

On March 17, 1998, seven people lost their lives and two were severely injured when a helicopter manufactured by Alpine Helicopters, Ltd. of Canada crashed in Guatemala while attempting to land at a high altitude after having taken off while grossly overweight. The helicopter was operated pursuant to an Aircraft Charter Agreement between Alpine and the United Nations, which is headquartered in New York.

Plaintiffs, through Ken Nolan and Christina Fry of our New York Office, attempted to assert jurisdiction by establishing a systematic and continuous relationship between Alpine and the State of New York asserting the following contacts: the Charter Agreement between Alpine and the United Nations agreed to venue and jurisdiction in New York; Alpine responded to invitations to bid in New York for the Charter

Agreement; Alpine sent agents to New York to participate in bid openings and to sign contracts with the U.N. in New York; and the Charter Agreement required Alpine to conduct activities which were either performed in New York or had a direct connection to the state.

In a well reasoned opinion by J. Belen of the Supreme Court of the State of New York in Kings County, defendant Alpine's motion for summary judgment for lack of personal jurisdiction was denied, allowing plaintiffs to continue their litigation in the New York State Court. The New York offices of Condon & Forsyth represented Alpine in its appeal of J. Belen's decision to the Appellate Division, Second Department. The appeal focused on the New York Civil Practice Rules and Laws Sections (NYCPLR) 301, as to whether Alpine engaged in a continuous and systematic course of

doing business in New York sufficient to subject it to jurisdiction in that forum, which confers jurisdiction over a non-domiciliary if the non-domiciliary transacts business within New York and the claim sued upon arises out of that transaction.

All wrongful death and personal injury claims were settled on the eve of oral argument of the motion scheduled before the Appellate Division Second Department. Losing the motion could very well have subjected Alpine to jurisdiction in a number of potential actions that would otherwise have been litigated elsewhere, i.e. Canada. Other factors likely influencing Alpine to settle included the risk of exposure in the popular New York forum. Discovery was limited to jurisdictional issues only and the actual cause of the crash was not explored beyond the conclusory reports published by Guatemalan Aviation Authorities. ✈️

Did You Know...

that Gerard R. Lear was recently inducted as a Fellow into the International Academy of Trial Lawyers, recognized as the most prestigious organization of trial lawyers in the world. Membership is by invitation only and is strictly limited to 500 active trial lawyers from the United States. The foundation's purpose is to promote and improve the administration of justice and the art of advocacy by funding scholarships, lectures, publications and other efforts so as to preserve the rule of law. The Academy invites only lawyers who have attained the highest level of advocacy.



Pictured above: Broadus A. Spivey, President, Gerry Lear, Kathlynn Fadely Lear, Robert T. Hall, Secretary-Treasurer and Robert L. Parks, Past President.

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