

## **PUBLIC JUSTICE 2009 TRIAL LAWYER OF THE YEAR AWARD FINALIST**

**Case:** *Lockerbie, Scotland – Pan Am Flight 103 Litigation*

**Counsel:** **James P. Kreindler, Steven R. Pounian, Michel “Mitch” F. Baumeister, Frank H. Granito Jr., and Frank Granito III**

## **MAKING TERRORISTS AND THEIR SPONSORS PAY**

On December 21, 1988, Libyan terrorists planted a bomb on Pan Am Flight 103, which exploded over Lockerbie, Scotland. All 259 passengers and crew aboard the plane and 11 people on the ground were killed. No one ever thought that Pan Am and its security subsidiary would be held responsible for a terrorist act. No one ever thought Libya would admit responsibility and provide compensation to the families. A determined team of trial lawyers proved them wrong.

After 20 years, New York attorneys **James P. Kreindler** and **Steven R. Pounian** of Kreindler & Kreindler LLP; **Michel “Mitch” F. Baumeister** of Baumeister & Samuels; and **Frank H. Granito Jr.** and **Frank Granito III** of Speiser Krause Nolan & Granito secured compensation for the Flight 103 victims’ families, recovering more than \$500 million from Pan Am’s insurers and \$2.7 billion from the Libyan government. The *Lockerbie, Scotland – Pan Am Flight 103 Litigation* marks the first and only time that a nation designated as a “state sponsor of terrorism” admitted its role in a terrorist attack and paid compensation to the victims’ families.

In 1989, the Flight 103 Plaintiffs’ Committee formed and began filing actions against Pan Am and its security subsidiary, Alert Management Services, in the United States District Court for the Eastern District of New York. During discovery, the Plaintiffs’ Committee unearthed critical evidence showing that Pan Am loaded the suitcase containing the bomb without matching it to a passenger, as was required by federal aviation rules.

This was no ordinary litigation, to be sure. The Plaintiffs’ Committee took nearly 200 depositions around the world, including Frankfurt, London and Malta airport employees; personnel from Pan Am and its security subsidiary; Federal Aviation Administration employees; German, U.K. and U.S. government investigators (several of whom testified incognito); and several terrorists in Swedish and German prisons.

After a three-month trial in 1992, a Brooklyn jury found that the airline defendants had committed willful misconduct in failing to follow FAA-mandated security procedures and held them liable for compensatory damages. The Plaintiffs’ Committee won one of the few willful misconduct verdicts ever rendered, which was later upheld by the U.S. Court of Appeals for the Second Circuit.

The legal team tried three sample damages cases with verdicts of \$9.2 million, \$9 million and \$1.8 million. After the U.S. Supreme Court denied *certiorari* in 1995, Pan Am’s insurers began settling cases. By the end of 1996, the Plaintiffs’ Committee settled more than 250 cases against the airline defendants for a total of over \$500 million.

Just as the airline litigation was coming to a close, the Plaintiffs' Committee found an opening to hold Libya accountable. As a result of lobbying by the Flight 103 families, Congress amended the Foreign Sovereign Immunities Act to permit certain death suits against foreign states, including Libya, that had been designated as "state sponsors of terrorism." Unlike other foreign states sued under the new law, Libya appeared in the litigation through U.S. counsel.

The unusual nature of the case created unique obstacles for the Plaintiffs' Committee. For example, discovery was put on hold pending the outcome of the murder trial of the two Libyan government agents charged with planting the bomb.

Moving toward settlement with Libya and securing payments required not only legal skills, but diplomatic and political skills. In the fall of 2001, the Plaintiffs' Committee and a team of Libyan negotiators – U.S. and French counsel, a Libyan Supreme Court Justice, and Libyan businessmen among many others – began a long series of settlement discussions in London and Paris. The Plaintiffs' Committee faced challenges in translation alone, with English, French and Arabic being spoken.

The Plaintiffs' Committee persevered through long, difficult settlement negotiations. Libya did not want to pay punitive damages, asserted that its payments should be off-set by the amount Pan Am paid, and demanded that the settlement be linked to the lifting of commercial sanctions imposed on Libya by the U.N. and U.S. In tenaciously representing the families, the Plaintiffs' Committee held fast to the position that the settlement would have to be much larger than the Pan Am settlement and that Libya had to accept responsibility for the bombing.

The legal team finally achieved a settlement with Libya in 2003. Libya agreed to pay each victim's family \$4 million when U.N. sanctions against it were lifted, another \$4 million when U.S. commercial sanctions were lifted, and a final payment of \$2 million when Libya was removed from the U.S. State Department list of "state sponsors of terrorism." In August 2003, Libya paid \$2.7 billion into a Swiss escrow account and sent a letter to the United Nations formally accepting responsibility for the bombing. In response, U.N. sanctions were lifted and settlement payments began.

The Plaintiffs' Committee followed through aggressively to enforce the agreement, including making several trips to Libya and securing legislation from Congress, to ensure that all the settlement funds would be paid. After a 20-year odyssey, Libya made the final \$2 million payment in the fall of 2008, so the full \$2.7 billion settlement has been distributed to the Flight 103 families. Each victim's family ended up receiving \$10 million, plus funds from the Pan Am settlements ranging from \$575,000 to \$13 million per victim.

The *Lockerbie, Scotland - Pan Am Flight 103 Litigation* held Pan Am corporate officials accountable for the company's intentional discontinuation of FAA-mandated security procedures, as well as the Libyan government that ordered the bombing. Thanks to the unusual tenacity of a group of trial lawyers, it is possible for victims of terrorist acts to obtain justice from state sponsors of terrorism.

The result in this case would not have been achieved without the leadership and hard work of **Lee S. Kreindler**, Chair of the Plaintiffs' Committee, who passed away in 2003. ■