Recently, the California Court of Appeals reinstated claims brought by Kreindler & Kreindler against the manufacturer of a film camera mount which was installed on a Bell 206L-3 Long Ranger helicopter when it crashed on the Llewellyn Glacier, in northwest British Columbia. The successful appeal of the case against Tyler Camera Systems allows the final piece of the case to be resolved on its merits. This will end a more than seven-year crusade for justice, which began with a recovery expedition on the glacier and will end with a jury verdict in a courtroom.

An Exciting Assignment with Tragic Consequences
In 1999, Paul Giraud was hired to direct a Nissan Xterra commercial. The script called for an ice climber to claw his way up the Llewellyn Glacier in British Columbia to reach a vehicle perched on top. A helicopter and pilot from Trans-North helicopters were hired and a film crew was brought in. On June 22, 2000, four men were on board the helicopter as it flew low-level passes across the glacier and over the ice climber. Paul Giraud was in the left front seat, the pilot occupied the right front, and two cameramen sat in the back two seats.

As the helicopter made a run over the glacier, the pilot lost control. The main rotor struck a protrusion of ice along a crevasse, causing it to fail and sending the helicopter into an ice wall, where it broke apart, exploded and plummeted into the crevasse, killing everyone aboard.
The Canadian government immediately dispatched a recovery team to the Llewellyn Glacier, but concern about shifting ice caused the team to permanently suspend efforts to recover the bodies and the wreckage from the crevasse.

The Canadian government's inability or refusal to recover the victims and the wreckage compromised the ability to fully investigate the crash and its cause or causes.

A Team of Experts Is Assembled

The Giraud family contacted Kreindler & Kreindler attorney Francis G. (Frank) Fleming, a senior attorney in the New York office, who is a former U.S. Marine helicopter pilot and has handled aircraft accident litigation for more than 27 years at the firm. He assembled a team of attorneys to investigate and prosecute the Giraud family's claims. Justin Green, a partner in the New York office and also a former Marine helicopter pilot, and Gretchen Nelson, a partner in the Los Angeles office, joined the prosecution of the Los Angeles-based lawsuit.

Kreindler filed suit in California against the known defendants, but without the wreckage there were too many unanswered questions that could hinder the case. The firm decided to organize and fund a private recovery mission to the Llewellyn Glacier. Air safety expert and former National Transportation Safety Board investigator Douglas Herlihy was brought in to arrange and coordinate the expedition. In June of 2001, a team of world class ice climbers, glacier recovery specialists and helicopter pilots, as well as vessel and land support personnel, was assembled to attempt a recovery.

One month later, the expedition landed on the glacier, established a base camp on the northern boundary of the Llewellyn Glacier ice field and explored the crevasse where the helicopter had crashed. The team was able to recover three of the four victims, including Paul Giraud, and a majority of the wreckage off the glacier.

Investigation Yields a New Defendant

As a result of the evidence collected, the complexion of the wrongful death litigation changed and a new defendant was identified. Specifically, the on-scene investigator was able to determine that the manufacturer of the camera mount affixed to the nose of the helicopter was to blame. He found that no counterweights were installed to counterbalance the weight of the camera and the mount, compromising the aircraft's center of gravity and rendering it difficult to control in certain circumstances.

The original complaint had named unidentifiable “Doe” defendants and pointed to the camera and the mount as compromising the controllability of the helicopter. After discovering the identity of the camera mount manufacturer and studying its manuals, we amended the complaint to specifically name it as a defendant.

The claims against the helicopter operator and all defendants other than the camera mount manufacturer were settled for a substantial sum. The camera mount manufacturer moved for summary judgment and also to dismiss based upon the statute of limitations. In opposition to the motions, we pointed out that the identity of the camera mount manufacturer was unknown and not...
reasonably ascertainable until we recovered the wreckage from the glacier. In any event, because there was a minor child involved as a plaintiff, the statute of limitations was tolled with regard to her claim.

With respect to the summary judgment motion, the accident scene investigation during the recovery of the wreckage was critically important. Investigator Herlihy was able to establish not only that the weight of the camera, the mount and the battery altered the center of gravity of the helicopter, but that the passengers in the rear of the helicopter were not buckled into their seats and were likely moving around the helicopter looking for the best camera shot and angle. Movement around the cabin, with the changed center of gravity and lack of counterweights, would explain the sudden loss of control, which caused the helicopter to clip the ice above the crevasse.

The trial court granted defendants’ motions and dismissed all claims against the camera mount manufacturer, and the order was appealed. Appeals Court Rules in Family’s Favor

In a sweeping victory for the family of Paul Giraud, a California Appeals Court reversed the trial judge and reinstated the case against the camera mount manufacturer, finding that the amendment of the complaint to specifically name the defendant mount manufacturer related back to the original filing of the complaint and that summary adjudication was inappropriate.

The underpinnings of both of these rulings by the appeals court are directly related to Kreindler & Kreindler’s efforts to recover the victims and the wreckage from the crevasse. Though the investigation of the Giraud case presented a unique factual circumstance, in other respects the firm’s efforts are no different than in any other case. Each case accepted by the firm is fully and independently investigated. The tremendous and varied skills of the Giraud team included piloting, engineering, on site investigation, litigation and appellate practice.

In addition to Frank Fleming, Justin Green and Gretchen Nelson, New York associates Susan Bainnson, Mike Sherwin and Hilary Taylor round out the team dedicated to prosecuting the Giraud case. This is typical of the firm’s team approach to staffing its cases, matching the strengths of our attorneys to the issues presented.

Attorneys on the Case

Francis G. (Frank) Fleming
Frank has been with the firm since 1979 and is a former Naval Aviator and engineer. Formerly a senior partner, he is presently a Fellow of the American College of Trial Lawyers and is Of Counsel to the firm. Frank focuses his practice on contested aviation liability cases, including commercial, military and general aviation accidents.

Justin T. Green
Justin has been with the firm for 10 years and is a partner. A Marine Corps helicopter pilot and veteran of the Gulf War, Justin is an FAA licensed commercial pilot in both helicopters and fixed wing aircraft. He is a frequent speaker on aviation law and a guest lecturer on that subject at Fordham Law School. His practice also centers on product liability.

Gretchen Nelson
Gretchen joined the firm in 2003 as one of the founding partners in our California office. She is active in the Los Angeles County Bar Association and is a frequent lecturer on class action litigation issues. Her diverse practice focuses on traditional tort work and complex business, antitrust and securities class action cases.
Full Value Settlement Reached in Helicopter Crash Case

Client versus Finmeccanica, originated in our California office and litigated in New York, is representative of the synergy between Kreindler & Kreindler’s East and West Coast offices. The case also highlights how the firm’s expertise, resources, reputation and global reach can induce a settlement, even in a case where jurisdiction in the United States is problematic.

In 2004, the client was a United States Navy helicopter pilot on assignment with the British Royal Navy. On March 30 of that year, the client was aboard an EH 101 Merlin helicopter when it crashed in Culdrose, England after a catastrophic tail rotor failure. He suffered extensive injuries in the crash, including multiple fractures to most of his body, lung damage and a closed head injury.

From the outset of the case, the challenge was to keep the product liability case in the United States despite the fact that the helicopter was designed, manufactured and maintained in Europe by AugustaWestland (in a joint venture between British and Italian companies), and the crash, wreckage and most of the liability witnesses were in England.

Suit was filed in federal court in New York, because AugustaWestland, in a joint venture with Lockheed Martin, was manufacturing a helicopter derivative of the EH 101 in upstate New York. Predictably, the defendants moved to dismiss the case for lack of personal jurisdiction and on the basis of forum non conveniens (the refusal to hear a proceeding on the basis of inappropriate forum). The defendants argued that all liability evidence and witnesses were in England and the British Ministry of Defense was a necessary party and could not be sued here. We countered that the military doctors who treated the client were in the United States and argued that the case had significant public interest here because the same defective parts were being integrated into the helicopter manufactured in New York under the joint venture.

Prior to the motions being decided, the parties agreed to mediation. California partner Stuart Fraenkel and New York partner Brian Alexander took the lead and were joined by Boston counsel Susan Friery, J.D., M.D., whose medical training was invaluable in articulating the client’s injuries and damages. The case settled at mediation for full value. The settlement was a result of meticulous preparation of the liability and damages sides of the case, including a life-care plan for the client and a fact-based projection of the impairment of his future earning capacity.

The settlement, which came as the dismissal motions were pending, was motivated by the clear message that the Kreindler team sent to the defendants: we will continue to fight for our client regardless of the outcome of the motions—whether in the U.S., in England or in Italy. And we were able to impress upon the defendants that the result would not be different in any of these jurisdictions.

New York associate Michael Sherwin also assisted on the case.

Settlements Reached in Final China Airlines Crash Cases

Kreindler & Kreindler attorneys recently settled the last of its 35 cases arising out of the May, 2002 crash of China Airlines Flight 611 off the coast of Taiwan. The Boeing 747 crashed after an in-flight break-up. New York partner Brian Alexander and Los Angeles partner Stuart Fraenkel teamed with Counsel Frank Fleming to successfully resolve all of the firm’s cases, including the largest recovery for any case on the aircraft.

The lawsuit brought by Kreindler & Kreindler demonstrated that both Boeing and China Airlines had improperly repaired the tail section of the 747’s fuselage after a tail strike 20 years prior. The Kreindler investigation into the crash raised important aviation safety issues with far-reaching implications.

Discovery uncovered countless aircraft manufacturer-sponsored studies that revealed a growing concern over the aging commercial aircraft fleet and the increased risk of structural fatigue, which could, and in the case of China Air Flight 611, did lead to catastrophic consequences.

Kreindler & Kreindler, as a firm, has been at the forefront in exposing and publicizing safety issues arising from the aging aircraft fleet around the world. Our in-house investigator, Christine Negroni, former aviation reporter for CNN and author of Deadly Departure: Why the Experts Failed to Prevent the TWA Flight 800 Disaster and How it Could Happen Again, was a member of the FAA’s Aging Transport Systems Rulemaking Advisory Committee. She represented the National Air Disaster Alliance, the largest grassroots aviation safety group in the country, which is comprised of aviation experts and professionals, as well as families who have lost loved ones in aviation disasters.
In The Works

Suit Filed on Behalf of Greek Actress in Helicopter Crash

Kreindler & Kreindler filed suit in California against a pilot and flight school for negligent operation of a Robinson 22 aircraft that injured a well-known model and actress from Greece. The helicopter lost engine power while in a climb, made a forced landing in uneven mountainous terrain and rolled over in a creek bed. The flight school operated the rental helicopter and had trained the pilot, Demetrios Kallios. Partners Brian Alexander, Stuart Fraenkel and Gretchen Nelson are handling the case.

Suit Filed in Potomac Helicopter Crash Case

Partner Rob Spragg and Counsel Frank Fleming recently filed suit in Maryland Federal Court against helicopter manufacturer Eurocopter and others for the wrongful death of a 29-year-old flight paramedic killed when an EC135 helicopter crashed at night into the Potomac River near the Woodrow Wilson Bridge. At the time of the crash, the bridge, which links Maryland and Virginia, was under construction and several tall cranes were in the vicinity. The suit, which will soon add the Federal Aviation Administration as a defendant, claims that the cranes were not properly lit at night in an area of air traffic to and from Reagan National Airport, and that the FAA failed to warn pilots of the danger posed by the cranes. It also criticizes the crashworthiness of the EC135 helicopter because two people were killed in what should have been a survivable crash.

Kreindler & Kreindler Continues Fight for Victims of the 2001 Crash of American Airlines Flight 587

The Kreindler team continues the fight in the name of justice for victims’ families and aviation safety for the public.

Kreindler & Kreindler has taken a lead role in every major commercial aircraft accident case in which it has been involved. The crash of American Airlines Flight 587 in Belle Harbor, Queens, New York is no exception. The November 12, 2001 accident was the second deadliest aviation accident in U.S. history. The firm represents far the largest group of families of victims who were on the airplane and most of the ground victims from the neighborhood where the Airbus A300 crashed. New York partner Steve Pounian was appointed by the Court as the Chairman of the Plaintiffs’ Executive Committee, and former Kreindler partner Blanca Rodriguez was named Liaison Counsel for the Executive Committee. Blanca has passed on the torch as Liaison Counsel to Kreindler partner Rob Spragg.

Kreindler & Kreindler chooses to take the lead in cases in which it is involved, so that our clients know that the firm in which they have placed their trust is the firm working for their benefit. In the American Airlines Flight 587 case, the firm wrote and argued the crucial choice of law brief, which resulted in the more generous maritime law being applied to the compensatory damages claims and New York law being applied to punitive damages claims for the ground victims.

Though most cases have settled, the firm has three of the seven remaining wrongful death cases and 13 of the 22 remaining personal injury/property damage cases involving ground victims. Steve and Rob, joined by New York partner Dan Rose, are litigating the liability and punitive damages cases for the remaining plaintiffs. The claims against Airbus focus on the design and certification of the Airbus A300’s vertical fin and the sensitivity of the rudder control system. The claims against American Airlines focus on the actions of its flight crew prior to the crash and the instruction given to American’s pilots regarding in-flight upset recovery during ground school and in simulator training.

Settlement Reached After Ten-Year Battle with Insurance Company Over Liability Coverage

A ten-year effort to recover under a CIGNA aircraft insurance policy recently ended with an agreement that CIGNA would pay a substantial confidential sum to the families of victims of a 1996 Mitsubishi MU2 airplane crash. The Utah crash killed several Coca Cola Company and advertising agency executives. By 1998, Kreindler & Kreindler had successfully obtained settlements for the families against most defendants, including the manufacturer of the aircraft. Nevertheless, CIGNA refused to cooperate or settle, and the firm refused to yield in our efforts to maximize the compensation to our clients. The issue raised in our declaratory judgment action against CIGNA concerned whether the accident aircraft was covered under a liability policy issued to an entity that had leased the aircraft near the time of the accident. CIGNA claimed its insured was not the lessee of the airplane when it crashed. Tireless and relentless effort on the parts of Brian Alexander, Frank Fleming and Will Angelley resulted in the successful settlement with CIGNA.
Kreindler & Kreindler LLP is pleased to announce that Anthony Tarricone has joined the firm as a partner and has helped open our new Boston office. Anthony, formerly of Sarrouf, Tarricone and Fleming, currently holds the position of Secretary on the Executive Board of the American Association for Justice (formerly ATLA) and is a past president of the Massachusetts Academy of Trial Attorneys. He has more than 23 years of experience handling cases involving aircraft accidents, product liability, medical malpractice, and other complex personal injury and wrongful death cases.

Anthony is joined in the Boston office by Susan Friery, J.D., M.D., who has been with the firm for 20 years and focuses on general tort, medical malpractice and complex medical issues in injury cases; James Gotz, who handles medical, pharmaceutical and product liability cases; and Joseph Musacchio, who focuses on general tort, product liability and appellate practice.

Mark Labaton has been named a partner in our Los Angeles office. Mark focuses on complex commercial litigation and class action securities litigation and has had leading roles in cases that have recovered more than $200 million in damages for his clients. A former Assistant U.S. Attorney, Mark spent seven years prosecuting cases involving corporate and white collar fraud and other business malfeasance.

We welcome Orla M. Brady, who has joined the firm as an associate in our New York office. Orla received her undergraduate degree from Northern Illinois University, her J.D. from New England Law School of Law and an LL.M. in International Law from Trinity College in Dublin, Ireland. She is a member of the bars of Massachusetts and Illinois, where she most recently practiced before moving to New York to join the firm. Orla, whose practice primarily involves aviation litigation, is also active in the American Association for Justice (formerly ATLA), is on the Board of Governors of the New Lawyers Division and is a member of several A.A.J. committees.

Finally, we are proud to announce that Los Angeles partner Gretchen Nelson is the President-Elect of the Los Angeles County Bar Association and will assume the presidency of the organization this summer. Gretchen is a founding partner in the Los Angeles office and handles class action litigation, securities litigation, and complex tort and wrongful death litigation.