

THE KREINDLER STANDARD

Setting the Standard for Excellence in Complex Plaintiffs' Tort Cases

Welcome to the latest issue of The Kreindler Standard.

This edition of The Standard introduces the firm's recently opened Boston Office, which is headed by American Association for Justice (AAJ formerly ATLA) Vice President Anthony Tarricone. Anthony has built a reputation as one of the most accomplished attorneys representing plaintiffs in the greater Boston area. He is joined by James Gotz, whose practice focuses on complex tort and product liability litigation; Joseph Musacchio, who likewise focuses on complex tort, product liability and appellate practice; and Susan Friery, M.D., J.D., who has been with the firm's New York office for nearly 20 years and focuses on medical malpractice litigation and complex injury cases. James and Joe each have featured cases in this issue.

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FEATURED CASE: Dodge v. Arda Tezel

Kreindler & Kreindler Wins a \$13 Million Jury Verdict for a Pedestrian Seriously Injured by a Negligent Driver

The attorneys in Kreindler & Kreindler's Boston office hit the ground running and in their first year obtained one of the largest personal injury jury verdicts in recent Massachusetts history. It was also one of the state's largest jury verdicts in a single victim motor vehicle case. In a case tried by James Gotz, a jury awarded our client \$13 million, plus interest, for the debilitating injuries he received after being run down by the defendant's vehicle.

At the time he was hit, William Dodge was walking to a train station and was in a pedestrian crosswalk at an intersection governed by a flashing light. He had made it more than half way across the street when the defendant's Honda Accord struck him. The impact was so great that

Mr. Dodge was lifted onto the hood of the Honda, shattering the windshield, crumpling the front roof line and causing ripples in the rear passenger side roof. The Honda came to a stop 98 feet beyond the place of impact.

In the accident, Mr. Dodge sustained a fracture of his cervical spine at C6-C7, which left him permanently paralyzed from the chest down. He also suffered an 8-inch degloving injury to his scalp. As a result, he underwent several operations and almost a year of rehabilitation. His medical expenses totaled more than \$700,000.

Success at trial required meticulous preparation of the liability and damages cases.

(continued on next page)



FEATURED CASE: **Dodge v. Arda Tezel** *(continued)*

Defendant's counsel argued that Tezel was not speeding, and that it was so dark and raining so hard that he could not see Mr. Dodge in the crosswalk. Defense counsel referred to Mr. Dodge as the "invisible pedestrian." However, photographs taken by the police within an hour of the crash were successfully used to rebut the argument that it was too dark to see a pedestrian in the crosswalk.

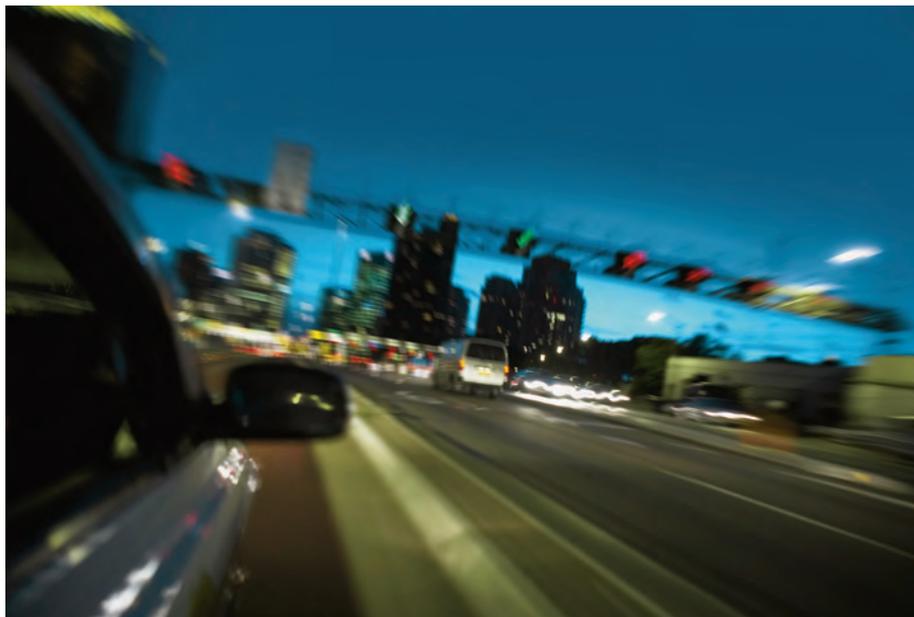
Defendant's accident reconstruction expert testified that Tezel wasn't speeding, but his credibility was undercut by simple and surgical cross-examination. First, James established that he had fabricated portions of his C.V., including the assertion that he had been certified as an "accident reconstructionist" in 1976 when in fact there was no such accreditation at that time. Also, he based many of his speed calculations on tests conducted using an "exemplar" vehicle which turned out to be different from the defendant's model Accord (he used a 4-door instead of a 2-door). This simple and

subtle difference undermined all of the expert's testimony.

The damages portion of the case was prepared with equal thoroughness. The testimony of an expert life care planner and a forensic economist established health care expenses and lost earnings of between \$7 million and \$10 million for different scenarios. A "Day in the Life" video was prepared to show the jury the travails that Mr. Dodge faces every day of his new post-injury life.

The jury's verdict appears to have accepted all of the economic damage calculations presented by the plaintiff. They also added approximately \$3 million for Mr. Dodge's pain and suffering.

The time James spent dissecting the defense expert's resume proved pivotal in the jury's rejection of his opinions and their acceptance of our arguments on behalf of our client. Proving the old axiom that the three key elements for a successful trial are preparation, preparation and preparation.



FEATURED CASE: **Datillo v. Arbella Mutual Insurance Co.**

\$1.1 Million Judgment Awarded in an Insurance Bad Faith Case Involving a \$20,000 Insurance Policy

Massachusetts is known as a state in which plaintiffs are rarely successful in asserting claims for the bad faith practices of liability insurance carriers. Recently, however, Joe Musacchio of Kreindler & Kreindler's Boston office successfully sued Arbella Mutual Insurance Company and obtained a judgment of \$1.1 million, including attorney's fees, for its refusal to settle a claim within policy limits.

In refusing to pay a policy limits demand of \$20,000, the Massachusetts auto insurer now has to pay more than fifty times that amount. And, as a result, our client will receive full compensation for her injuries rather than being limited by inadequate insurance coverage.

On August 30, 1998, our client was seriously injured when her motor vehicle was hit by a vehicle driven by defendant Anthony Caban. The accident took place in Jupiter, Florida.

Arbella Mutual insured Caban under an automobile policy which had limits of \$20,000 per person and \$40,000 per occurrence. The liability of its insured was clear, and the plaintiff's damages without question exceeded Caban's meager policy limits, so a demand was made to settle her claims for the full \$20,000 limit. In insurance bad faith cases, a key element of a claim is that, based on the injuries and the liability, it's unreasonable to refuse the full policy limit in exchange for a full release. Such a refusal fails to protect the

insured against a judgment beyond the policy limits. Along with the demand letter, we provided a detailed settlement package, including medical records and police reports. The demand was made one month after the accident, with an express 30-day time limit for acceptance on it.

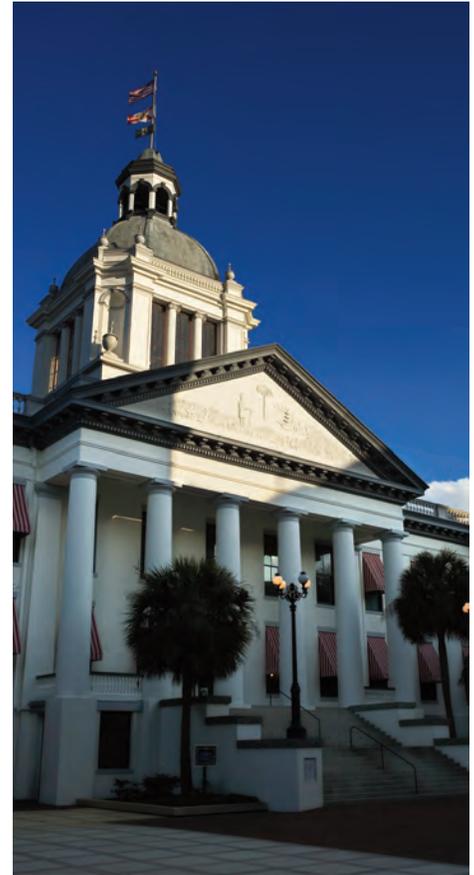
Arbella Mutual ignored the policy limits demand and failed to inform Caban of the offer to settle. They later misrepresented to him that the demand had never been received.

On November 2, 1998, at the expiration of the 30-day deadline, a lawsuit was commenced against Caban in a Florida State Court. Realizing that he was at risk of a large judgment against him, Caban agreed to the entry of a \$450,000 judgment against him and he assigned his rights against Arbella Mutual to our client. We then sued Arbella Mutual under the assignment of Caban's rights for acting in bad faith.

The essence of our claims against Arbella Mutual was that it had a duty to protect Caban against excess liability, to convey settlement demands to him, and to offer the policy limits when liability and damages are reasonably clear.

At trial, Joe established that not only were Arbella's practices unfair, but the insurer's conduct was willful. He established that a six-month delay in responding to the demand was patently unreasonable. Each excuse offered by Arbella Mutual for the delay was rejected by the Court. In the end, Arbella Mutual was held responsible for the entire judgment against Caban, plus attorney's fees, costs and interest.

The Datillo verdict is a testament not only to the firm's dogged pursuit of justice for our clients, but also to the creative approaches that we take to ensure full and fair compensation, even when the odds are not in our favor.



New and Noteworthy

Kreindler & Kreindler announces new additions and promotions

Kreindler & Kreindler LLP is pleased to welcome **Jennifer Johnston-Terando**, who has joined us as an associate attorney in our Los Angeles office. Jennifer is a 2000 graduate of Case Western Reserve University School of Law in Cleveland, Ohio, where she was Associate Editor of Health Matrix: Journal of Law and Medicine. She also received her Bachelors of Science in Nursing from Case Western.

Jennifer brings experience in health care, toxic torts, product liability, professional liability, cyber and employment law. She is a Registered Nurse and has worked at Cedars Sinai and UCLA Medical Center in Los Angeles.

Also in our Los Angeles office, partner **Gretchen Nelson** has been elected President of the Los Angeles County Bar Association and also named Person of the Year by the Metropolitan News-Enterprise.

Boston partner **Anthony Tarricone** has been elected Vice President of the American Association for Justice.

New York partners **Noah Kushlefsky** and **Justin Green** have been named to the Board of Directors of the New York State Trial Lawyers Association. In addition, Noah has been asked to co-chair NYSTLA's Grieving Families Committee, which is working to improve New York's wrongful death damages laws.

Kreindler & Kreindler lawyers continue to speak and give presentations on various law and aviation topics around the country

New York partners **Marc Moller** and **Brian Alexander** spoke at the 19th Annual Aviation Law and Insurance Symposium sponsored by Embry Riddle Aeronautical University. Los Angeles partner **Stuart Fraenkel** was a featured speaker at the Osh Kosh Air Show and also did a safety seminar for the Los Angeles Police Department's Aviation Unit on behalf of the Federal Aviation Administration. Los Angeles partner **Mark Labaton** has become a featured columnist on complex litigation matters in the Los Angeles Daily Journal and the San Francisco Daily Journal.



RECENT SUCCESSES

\$3.3 Million Settlement Reached in Hunting Accident Case

New York partner Noah Kushlefsky co-counseled with a prominent New Jersey law firm and recently obtained a \$3.3 million settlement for a man who was shot and seriously injured while participating in a deer hunt using the drive method. The case (*Coring v. Gobbler's Knob Hunting Club*) demonstrates both the diversity of our practice and our willingness to team with other plaintiff's law firms when it serves the interests of our mutual clients.

The liability issues in the case centered on hunting safety and proper hunting procedures for different types of hunts. Never having hunted himself, Noah began by speaking with experts and immersing himself in hunter education course materials so that he could effectively represent our client.

A safe and successful deer drive requires careful preparation and communication. Each hunter must know the location of all other hunters and the limitations on where they can fire their weapons (the zone of fire). For this reason, there must be a hunt master who sets up the hunt and disseminates to all hunters the necessary information.



The victim was shot during an annual Thanksgiving weekend hunt on property owned by one of the defendants. Each year the property owner invited a group of friends, and were joined by members and guests of the Gobbler's Knob Hunt Club. Each year the number of participating hunters grew, until the hunt was attended by what we claimed was an unmanageably large group of hunters. On the day of the shooting, more than 22 hunters were on the property.

The defendants in the case were the shooter, the hunting club and the property owner. The liability case centered around the mismanagement of the drive hunt. Some participants were assigned positions without knowing that there was another hunter to their left or right. Some assignments were changed as the hunters were going to their spots. And, in depositions, it became clear that different participants had a different understanding of proper positioning and the correct zone of fire.

Our client was shot twice, once in the abdomen and once in the leg, by a hunter firing outside of his zone of fire. However, the shooter believed he was shooting in the correct zone, pointing to mismanagement of the drive. Nevertheless, the shooter had also violated a cardinal rule of hunting: identify your target and know what is beyond it before taking the shot.

The shot to our client's leg ruptured his femoral artery. Only the quick thinking of a fellow hunter, who applied a tourniquet,

saved him from bleeding to death in the woods. He was evacuated by helicopter.

Over the next two years our client underwent seven operations, including two fasciotomies and painful skin grafting. He was hospitalized twice with serious infections and developed compartment syndrome which caused permanent nerve and muscle damage to his leg. He was unable to work or support his family and suffered attendant financial and psychological distress.

Using his treating physicians as experts, as well as a vocational rehabilitation expert, a life care planner and an economist, we were able to demonstrate significant economic loss, future medical expenses, permanent disability, pain and suffering, and loss of enjoyment of life.

The settlement represented maximum recovery potential in the case.

Confidential Settlement Achieved on Behalf of Family of Boy Thrown from Whale Watching Ship

New York Partner Justin Green recently settled a case involving a 13-year-old Boy Scout thrown from a whale watching ship in the Atlantic Ocean off of Cape May, New Jersey. The accident occurred when the boy and several of his fellow scouts were standing on the bow pulpit of the ship as the captain navigated at full speed in rough waters toward the whale watching area. Several of the boys had previously jumped with the

RECENT SUCCESSES *(continued)*

movement of the bow in the waves but had been instructed to stop.

The last time anyone saw the young victim, he was stationary and holding tight to the ship's rail. Moments later he had vanished, having been thrown overboard.

The grieving family turned to Kreindler & Kreindler to assist in the inquiry into the accident. Our investigation revealed that the ship's captain failed to take simple and appropriate precautionary measures to avoid the accident, and then reacted in a way that may have contributed to the boy's death.

It was learned that the bow pulpit is usually cordoned off by rope during trips to and from the whale watching area, but that day the ship's crew had failed to secure the area. The captain had a direct view of the boys on the bow, but did not order them out of the area until the ship had anchored. The captain also failed to warn the passengers about the rough seas they would encounter or the danger of standing on the bow pulpit.

It was also disclosed that the crew had not been given federally mandated "man overboard" training. Further, the captain violated the

standard practice of immediately putting the ship's engines in neutral to stop the propellers when the boy went overboard. Instead, he turned the ship toward where the boy had fallen and put the engine in full reverse. It's possible that this caused the boy to be sucked into the engine and propeller. The boy's shirt was found wrapped around the propeller.

After building a compelling negligence case against the ship's owner and operator, the case was settled for more than full value.

IN THE WORKS



NAVY SEAL TEAM MEMBER KILLED DURING TRAINING EXERCISE IN VIRGINIA

Kreindler & Kreindler has been retained by the family of a Navy Seal who was killed during a nighttime training exercise on the James River near Jamestown Island in Virginia. The victim and two other special warfare sailors were navigating a 24-foot rigid hulled inflatable boat when it was struck by a civilian tugboat which was operating without its running lights. The case is in the pre-suit investigation stage. The case is being handled by partners Noah Kushlefsky and Daniel Rose, a former Naval aviator.

KREINDLER & KREINDLER RETAINED IN TWO CASES INVOLVING SPORT UTILITY VEHICLE ROLLOVERS

The firm is preparing to file suit in two cases involving sport utility vehicle rollovers. Both cases focus on the ability

of the vehicles to protect vehicle occupants in the event of otherwise survivable accidents.

The first case involves a rollover of a Ford F-250 pick-up truck. The accident occurred when the vehicle, while traveling at a reasonable rate of speed, hit black ice. During the accident sequence the driver's side roof was crushed and nearly flattened, causing the driver, who would otherwise have survived the accident, to die from positional asphyxia. The passenger side roof was not compromised and the passenger walked away with minor scratches. By federal regulation, the motor vehicle's roofs are required to withstand certain impact loads to protect passengers. The roof of the F-250 failed to meet these requirements.

In the other case, a Ford Expedition rolled over after its driver swerved to avoid a deer on a highway. During the accident, the side rear windows blew out and allowed the two third row occupants to be ejected from the vehicle. The remaining passengers survived the impact. The Ford Motor Company had identified concerns regarding the rear windows and recognized the need to protect passengers

with either side curtain air bags or advanced window glazing. Ford began to develop side curtain air bags for the vehicle but it took years to integrate them into the design. Rather than use the advanced glazing system in the interim, Ford did nothing to solve this known problem. The accident vehicle was manufactured while the side curtain air bags were in development. The cases are being jointly handled out of the Boston and New York offices.

FIRM RETAINED TO REPRESENT FAMILIES IN KENYA AIR FLIGHT 507 CRASH

Kreindler & Kreindler has been retained to represent families of victims of Kenya Airways flight 507, which crashed shortly after takeoff from Douala, Cameroon. The crash occurred when the pilot, already delayed for an hour, elected to take off in bad weather. The flight took off even as flight crews for Cameroon Airlines and Royal Air Maroc chose to wait out the passing storm for a while longer. The crash occurred minutes after takeoff on the aircraft's planned flight path, a short 5.5 kilometers from the airport. The Boeing 737-800 aircraft carried 105 passengers and nine crew members.



OUR NEW OFFICE IN BOSTON TO BETTER SERVE OUR CLIENTS AND COMMUNITY

The opening of our Boston office continues the firm's commitment to aggressively and comprehensively serving the needs of our clients on both a local and a national level. While many law firms introduce themselves to new communities through affiliations and partnerships with local firms, we have chosen to grow organically from the ground up. The attorneys in the Boston office each distinguished themselves at other firms before joining Kreindler & Kreindler, and each meets the firm's high standards of professionalism and dedication to the practice of law and to our clients.

As with our California office, we have fully integrated the Boston office and its attorneys into our practice. Anthony, Joe, James, and Susan all have active cases with attorneys

in New York and Los Angeles. This allows the firm to best represent our clients by staffing cases based upon the expertise and strengths of our attorneys regardless of geography.

The Boston office continues and maintains Kreindler & Kreindler's standing as the preeminent plaintiff's aviation law firm in the country, if not the world. Kreindler & Kreindler has long been recognized as pioneering the practice of aviation litigation and the firm has had the lead role in most of the significant cases in the aviation law field. The *Matthew Bender / Lexis Nexis* treatise *Aviation Accident Law*, which is the seminal publication in the field, is authored by members of the firm.

More Information

If you would like to learn more about Kreindler & Kreindler LLP or about any topic discussed in this issue, send us an email at info@kreindler.com, visit our website at www.kreindler.com, or call any one of our offices:

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