

# THE KREINDLER STANDARD

*Setting the Standard for Excellence in Complex Plaintiffs' Tort Cases*



Kreindler & Kreindler LLP is pleased to present the inaugural issue of *The Kreindler Standard*, our firm's newsletter.

The mission of this newsletter is to provide our friends and colleagues in the legal community with information about our practice and some of our cases, as well as share our perspective on interesting developments in the law.

Kreindler & Kreindler LLP has long been recognized as the world's preeminent plaintiff's aviation law firm. Less well-known is the fact that our firm brings the same skill and dedication to our General Torts practice, and has achieved some of the highest settlements and verdicts in personal injury and wrongful death cases locally and nationally for more than 55 years. Indeed, the West Publications Treatise *New York Law of Torts* is authored by members of our firm.

We hope that this periodic newsletter offers useful information and insight into our diverse practice.

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## FEATURED CASE: Ruby vs. Budget Rent A Car

### New York Appeals Court Upholds One of the Highest Personal Injury Verdicts in State History, Including a Record Future Pain and Suffering Award

Recently, the New York State Court of Appeals declined to interfere with one of the highest personal injury awards in the state's history, which was obtained by Kreindler & Kreindler LLP on behalf of a seriously injured client.

Two state appellate courts approved an award of nearly \$20 million, after a jury verdict of more than \$24 million. The affirmation of such a high award is significant because New York state courts are activists in reducing high jury awards, based upon a mandate that they decrease awards that are not "reasonable."

#### Compelling Evidence Critical to Victory

Verdicts that result from emotion rather than evidence are easily targeted by higher courts. The key to success in this case was marshalling and presenting evidence that was so compelling, the

jury had a legitimate basis upon which to adequately compensate the grievously injured plaintiff.

The case involved 25-year-old pedestrian Ethan Ruby. In November of 2000, the driver of a Budget Rent A Car ran a red light, causing a collision that struck Ethan and left him paralyzed. Ethan had been a Division I baseball player at the University of Pennsylvania and founded a successful Wall Street trading firm after graduating in 1997.

Following the tragedy, Ethan retained Kreindler & Kreindler LLP and partners Marc Moller and David Cook to assist him in dealing with what had suddenly become an uncertain future. His future medical and care expenses alone will likely exceed \$5 million.

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## Partners on the Case

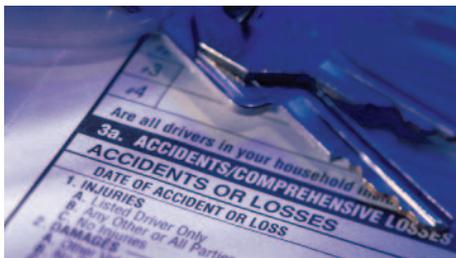


**Marc Moller**, a native New Yorker, has been a partner in Kreindler & Kreindler LLP for more than 25 years. A graduate of Cornell Law School, he has been lead attorney in many landmark cases, both nationally and locally. Marc is active in numerous civic and charitable organizations in New York and elsewhere.



**David Cook** was born in the Bronx and joined Kreindler & Kreindler in 1985. He is an author of the West Publication *New York Law of Torts* and is a proud supporter of several charities, including The Miami Project to Cure Paralysis and the Make-A-Wish Foundation.

## FEATURED CASE: **Ruby vs. Budget Rent A Car** (continued)



### Arguing Budget's Culpability

All too often, automobiles are underinsured in New York State, causing significant problems for victims who are injured in automobile accidents through no fault of their own. Relying on New York Vehicle and Traffic Law § 388, which creates vicarious liability in vehicle owners for the negligence of drivers, Kreindler & Kreindler LLP filed suit against Budget Rent A Car, arguing that Budget was liable for the negligence of the driver to whom it had rented the vehicle. New York's V.T.L. § 388 has a dual purpose: to ensure that injured parties have recourse against a financially responsible owner, and to encourage owners to exercise care when entrusting their vehicle to others. In Ethan's case, it was critical to

his future care and financial security to have a financially viable defendant.

### Award Follows Breakdown of Settlement Talks

After extensive discovery on both liability and damages, and prior to trial, Budget Rent A Car conceded liability. Efforts to settle the case were fruitless, however. After a 3-week damages trial, the jury returned a verdict of \$24.5 million, which included past and future medical expenses of \$5.5 million, lost income of \$4 million, and past and future pain and suffering of \$15 million. After post-trial motions, the trial court let stand the \$3 million verdict for past pain and suffering, but reduced the future pain and suffering award to \$9 million and the award for future medical expenses by \$1 million. The amount of the judgment totaled \$20.3 million. The Appellate Division First Department slightly modified the trial court's findings, which ultimately resulted in one of the highest amounts ever sustained on behalf of an injured plaintiff in New York by its Appellate Courts.

## IN THE WORKS

### SUIT FILED ON BEHALF OF FORMER MYSPACE.COM SHAREHOLDERS

Kreindler & Kreindler filed suit on behalf of the former shareholders of Intermix Media, which created and owned the world's most popular website, MySpace.com. The class action lawsuit alleges that News Corporation, the media giant controlled by Rupert Murdoch, purchased Intermix for the grossly inadequate price of \$580 million, and that Intermix's former directors and officers breached their fiduciary duties by not seeking to secure a better purchase price for Intermix and its "crown jewel" website. The case is being handled by partners Marc Moller and Brian Alexander and associate Brendan Maher from our New York office, along with partners Gretchen Nelson and Mark Labaton from our Los Angeles office.

### LAKE GEORGE TOUR BOAT OPERATOR SUED FOLLOWING TRAGIC CAPSIZING

Kreindler & Kreindler recently filed wrongful death actions on behalf of the families of the victims of the October 2005 capsizing of the Ethan Allen, a tour boat which operated on Lake George in upstate New York. The Ethan Allen was carrying 47 elderly members of a tour group when it overturned, killing 20 passengers. Kreindler's investigation revealed that the boat was overloaded and that alterations to its structure made it top heavy and susceptible to listing and capsizing. Contributing to the accident were the absence of an automatic bilge pump and the captain's failure to pump out free standing bilge water with the boat's manual pump. The case is being handled by partner Daniel Rose.



## RECENT SUCCESSES

### Product Liability Case Creates New Law in Connecticut

Kreindler & Kreindler LLP teamed with a respected Connecticut law firm to represent the families of two construction workers severely injured when a defective roof bracket failed and they plummeted to the ground. The bracket was defective because it was not designed to withstand some of the loads that would be placed on it.

After a lengthy trial in Connecticut, a jury found the bracket defective and the proximate cause of the injuries, but also found negligence by the plaintiffs' employer, in failing to supply a

safety net, to be an intervening cause. Plaintiffs had objected to this special interrogatory at trial, arguing that, at best, an employer could only be found jointly negligent.

The Connecticut Supreme Court agreed and reversed a longstanding line of cases that allowed this type of defense. The case was sent back to the trial court, and following a second trial, the jury returned a verdict awarding the plaintiffs more than \$2 million. Partners David Beekman and Andrew Maloney handled the case.



### U.S. Supreme Court Refuses to Upset Kreindler & Kreindler LLP's Victory for Workers Injured on Navigable Waters

Kreindler & Kreindler won a hard fought, significant victory for workers killed or injured on navigable waters, by preserving the right to seek generous general maritime law damages under the 1927 Longshore or Harbor Workers' Compensation Act (LHWCA), rather than the limited state worker's compensation schemes.

The case involved Rocco Morganti, an employee of Lockheed Martin Corporation, who drowned on Cayuga Lake in upstate New York, after a wave caused him to fall into the water while working on a research barge moored in the middle of the lake. Mr. Morganti's widow filed a claim for death benefits under the LHWCA, which was opposed by Lockheed Martin on the grounds that Mr. Morganti was not a "maritime

employee," and that the barge was a fixed platform, more like an artificial island. An administrative law judge found that Mr. Morganti was only "transiently and fortuitously" on navigable waters and denied the claim. That decision was appealed to the Benefits Review Board, which reversed the denial of benefits. The United States Court of Appeals for the Second Circuit affirmed that ruling, rejecting Lockheed Martin's transient and fortuitous argument. The Court of Appeals held that Mr. Morganti only had to satisfy *situs* (meaning that he was on navigable waters) and *status* (meaning he was a covered employee). Lockheed pressed its argument to the United States Supreme Court, which denied *cert.* Partners Marc Moller and Daniel Rose handled the case.



### MEDICAL MALPRACTICE CASES

Kreindler & Kreindler recently filed suit in several medical malpractice cases. The cases are being handled by partners David Beekman and Noah Kushlefsky along with Dr. Susan Friery, who is both an attorney and a physician:

- A New York case involving the sudden death of a 49-year-old wife and mother after doctors failed to diagnose endocarditis, an infection of the heart, which can and did occur after dental work.
- A New Jersey case involving a 47-year-old businessman and family man who sought medical treatment for right eye discomfort. His treating physician misdiagnosed an infection as a corneal abrasion and prescribed a steroid, which further exacerbated the infection, resulting in blindness in the eye.
- A New York case involving an 18-year-old Fashion Institute of Technology student who presented to the school health center with symptoms consistent with meningococemia, a type of meningitis. The health center's failure to promptly diagnose and treat the illness resulted in amputation of one leg and two fingers and disfigurement of the other leg.



## RECENT SUCCESSES *(continued)*

### **Kreindler & Kreindler Presses Libya for Payment in 1988 Bombing of Pan Am Flight 103**

For 18 years, Kreindler & Kreindler LLP has sought justice for the victims of the Pan Am Flight 103 bombing over Lockerbie, Scotland. Our involvement began with the case against the airline under the Warsaw Convention, which resulted in a historic jury verdict of willful misconduct, entitling the families to full and fair compensation. Then, in 1996, Congress amended the Foreign Sovereign Immunities Act to allow suits against nations which were considered “state sponsors of terrorism,” including Libya. That same year, Kreindler & Kreindler filed suit against Libya on behalf of 117 families of the victims of Flight 103.

In 2003, a historic three-phase settlement agreement was finalized, under which Libya agreed to pay \$2.7 billion to the victims’ families. Kreindler & Kreindler attorneys are currently working to obtain the third and final settlement payment of \$536 million from the government of Libya. In May 2006, President Bush ended a key obstacle to the final payment by announcing the removal of Libya from the U.S. list of State sponsors of terrorism. The case is being handled by partners Steve Pounian and James Kreindler.

### **Kreindler & Kreindler Settles Train Derailment Cases**



Partners David Cook and David Beekman recently settled three cases arising out of passenger train derailments. In one case, a woman in her 60s with a pre-existing respiratory condition suffered serious rib injuries that sent her health into a downward spiral. Although she recovered from her injuries, she was left with some additional respiratory issues that were attributable to the accident. The case settled for \$825,000.

The other two cases involved an elderly couple who were involved in a different train derailment, injuring the husband, age 72, and killing his 65-year-old wife. Claims were made for personal injury and wrongful death and included a claim for negligent infliction of emotional distress on behalf of the husband, who witnessed his wife’s death. The cases settled for \$2,850,000.

## **New and Noteworthy**

### *Two Talented Associates Join Kreindler & Kreindler LLP*

Kreindler & Kreindler LLP is pleased to announce that Megan Benett and Elizabeth Crotty have joined the firm as associates.

Megan graduated from Stanford University in 1993 and the University of Michigan Law School in 1999, and recently completed a two-year clerkship with Chief Judge Judith Kaye of the New York State Court of Appeals.

Elizabeth is a 1993 graduate of Hobart & William Smith College and Fordham University Law School in 2000. She joins the firm after six years as Assistant District Attorney with the New York County District Attorney’s Office, where she was a member of the Special Prosecutions Bureau and prosecuted complex financial crimes.

### **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](mailto:info@kreindler.com), visit our website at [www.kreindler.com](http://www.kreindler.com), or call any one of our offices:

100 Park Avenue  
New York, NY 10017  
(212) 687-8181

707 Wilshire Boulevard  
Los Angeles, CA 90017  
(213) 622-6469

277 Dartmouth Street  
Boston, MA 02116  
(617) 424-9100

801 Franklin Avenue  
Franklin Lakes, NJ 07417  
(201) 343-7771



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