

Francis G. Fleming Jr., *Of Counsel*



Francis G. Fleming Jr.

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Admitted to Bar:

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New Jersey

United States Supreme Court

Formerly a senior partner of Kreindler & Kreindler LLP between 1984 and 2002 and a Fellow of the American College of Trial Lawyers, Francis G. Fleming received his baccalaureate engineering degree (B.E.) in 1967 from Villanova University and accepted a commission as a Second Lieutenant in the United States Marine Corps upon graduation. He completed training and was designated as a Naval Aviator in 1968 and served as a helicopter pilot and forward air controller in Viet Nam in 1969. He graduated from Villanova Law School and received his Juris Doctor degree in 1974 and participated in the Villanova Law Review as an Associate Editor.

Frank Fleming then clerked for the Honorable Edwin D. Steele, U.S. District Court Judge for the District of Delaware in 1974-1975, and served as an Assistant Attorney General for the Honorable Bruce M. Babbitt, then Attorney General for Arizona in 1976 and 1978.

In 1979, he joined Kreindler & Kreindler LLP in New York City and commenced his work specializing in representing victims of aircraft crashes. He worked for the Plaintiffs' Steering Committee appointed in MDL 391 on the discovery and related litigation arising out of the crash of a McDonnell Douglas DC-10 operated as American Airlines Flight 191 which crashed near Chicago on May 25, 1979. The safety issues in this case implicated the design of the DC-10, particularly in regard to the failsafe requirements of the FAA's certification regulations, and the training and maintenance practices of the American Airlines in regard to the underwing engines.

In 1985, he worked for the Plaintiffs' Steering Committee appointed in MDL 683 on the discovery and related litigation arising out of the crash of a McDonnell Douglas DC-8 operated as an Arrow Air military transport which crashed near the Gander, Newfoundland airport while returning American servicemen from peace-keeping duties in the Sinai desert. The liability issues in this case focused on takeoff in icing conditions as well as the effect of the Warsaw Convention as modified by the so-called Montreal Protocols in the circumstances of this flight, and the claims for punitive damages against the bankrupt operator.

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Starting in 1989, he was member of the Plaintiffs' Steering Committee appointed in MDL 807 on the discovery and related litigation arising out of the in-flight explosion of a Boeing 747 operated as United Airlines Flight 811 from Hawaii intended for Auckland, New Zealand and Sydney, Australia, in which nine passengers were killed and numerous passengers survived, albeit with serious personal injuries and emotional consequences. The liability issues in this case also focused on the effect of the Warsaw Convention as modified by the so-called Montreal Agreement in respect to United Airlines, and the product liability of Boeing in respect to the Boeing 747 forward cargo door design.

Also starting in 1989, he did extensive work on behalf of passengers related to claims and personal injury claims arising out of the crash of a McDonnell Douglas DC-10 operated as United Airlines Flight 232 which crashed near Sioux City, Iowa on July 19, 1989 (MDL 817). The liability issues in this case implicated the original design of the DC-10, with particular emphasis on the failure of McDonnell Douglas to review the design of the aircraft in light of the fact that several design assumptions which had been made in connection with the FAA's certification regulations in the early 1970s proved in time to be unfounded, as well as the training and maintenance practices of the airline in regard to the aircraft's engines, and the manufacturing and metallurgical process of the General Electric CFM-6 turbofan engine disc located in the DC-10's empennage.

During 1993 and 1994 he served as a member of the Plaintiffs Steering Committee for MDL 936 known as In Re Air Crash at LaGuardia Airport involving USAir Flight 405 which crashed on takeoff in icing conditions. This case concluded with a three month trial as a result of which the operator, USAir, was found liable to the passengers for compensatory damages. During 1997 and 1998, Mr. Fleming was a member of the Plaintiffs' Steering Committee for MDL-1178 - Comair Flight 3272, known as In Re Air Crash near Monroe, Michigan, on January 9, 1997 involving an approach of an Embraer Model EMB-120RT in adverse winter weather conditions. This claim involved operational error of a commuter turbo prop and product liability of a foreign manufacturer.

In 1998, Mr. Fleming was appointed to the Plaintiffs' Steering Committee organized in MDL 1237 concerning the crash of a Boeing 747 in Agana, Guam on August 6, 1997 being operated as KAL Flight 801 from Seoul, Korea. Mr. Fleming briefed and won a motion which established the applicability of what is called the IATA Initiative, which essentially removed the damages limitations of the Warsaw Convention. He also obtained advances for his clients from the airline and obtained Court approval of the first and largest eight-figure settlement in the proceedings.

Also in 1998, in respect to the so-called SilkAir disaster involving a new Boeing 737 operated as SilkAir Flight MI-185, which crashed from altitude near Palembang, Indonesia in December, 1997, MDL 1276, Mr. Fleming successfully defeated Boeing's attempt to dismiss numerous claims, including Boeing's motion to dismiss based on the grounds of forum non conveniens, because the Court accepted Mr. Fleming's argument that the issues surrounding the safety of the Boeing 737 flight control capacities warranted

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retention of these claims in the United States, despite the fact that the overwhelming majority of the victims were from Southeast Asia. These claims were brought to a successful conclusion based on a settlement with Boeing allowing for a trial in California Superior Court against Parker Hannifin which made a flight control system component alleged to be responsible for the crash. In that trial, Parker Hannifin was found by the jury to be responsible for the crash and all of the cases were resolved following the verdict.

During 2003 to 2006, Mr. Fleming acted as Liaison Counsel and lead plaintiffs' lawyer in litigation in the U.S. District Court for the District of Connecticut involving the crash of a Swearingen Metroliner turbo-prop operation between Barcelona, Spain and Algeria, Algiers. This was followed by an extensive case involving a military crash brought against Sikorsky Aircraft and General Electric in Connecticut involving the MH-53E and the GE T-64 engines which power it. (Mr. Fleming flew CH-53A's and D's in Viet Nam and stateside during the late sixties and 1970-1971). Recently, he has been involved in litigation related to several civilian medivac and executive transportation of EC-130 and EC-135 helicopters, and an action involving an Air Creation light sport aircraft and ultralights. Finally, Mr. Fleming was directly involved the relatively high profile litigation concerning the several crashes of Bell/Boeing MV-22 Osprey aircraft operated by the U.S. Marine Corps.

In addition to these major air crash cases, Mr. Fleming has represented numerous persons injured or killed in general aviation and military aviation cases. These persons include members of both Houses of Congress, well known business executives, entertainers and professionals and prestigious military personnel, including pilots involved in the U.S. Air Force's Thunderbirds and the Marine Presidential Helicopter Squadron, HMX-1.

Aircraft with which he has been involved include the McDonnell Douglas DC-10 and DC-8, Boeing 747, Boeing 737, Fokker F-28, Mitsubishi MU-2, Boeing B-52, Northrup T-38, Piper 601 Aerostar, Beech Bonanza, EMB-120 and numerous types of helicopters, including Sikorsky S-76, H-60, and CH-53, Bell 47 G2, 206, 212, 412, Boeing CH-46 and CH-47, Robinson R-22, Kaman H-2 and BKK (Eurocopter) 117 EC-350, 355 and 135 helicopters.

Additionally, he has served as the Chairman of the Aviation Section of the American Trial Lawyers Association, and written several papers and given lectures to the ATLA (now AAJ) annual meeting, the American Bar Association Tort Insurance and Practice Section and Southern Methodist Law School Air Law Symposium, and Beaumont/Garnault International Aviation Conference, London, England and Korea.

As indicated in his biographical materials, he is admitted to the Bar in the States of Pennsylvania, Arizona, New York and New Jersey and numerous federal courts including the United States Supreme Court. He is a former Associate Editor of the Villanova Law Review. He has also tried cases in Arizona, New Jersey, California, Kentucky, Ohio, New Mexico and Georgia, and argued or briefed appeals in the Second, Fourth, Sixth, Seventh and Ninth Circuits.