

# Michael Krzak

## 'Ghost' Travels the World Handling Delicate Aviation Disaster Cases

by Mike Bailey

An industrial accident ended one career but started another for Michael S. Krzak, who left the baseball diamond to become one of the foremost aviation law attorneys in the United States.

Krzak, along with Robert Clifford and Kevin Durkin of **Clifford Law Offices**, is among a handful of lawyers in the United States handling the delicate, complex and often-emotional litigation arising out of airline crashes. His expertise means he is in high demand, often traveling to distant sites, earning him the Paladinesque moniker "Have File — Will Travel."

Although he has secured millions of dollars in judgments for clients whose lives have been forever shattered by airline disasters and other accidents, Krzak receives little publicity because his settlements are almost often sealed as part of non-disclosure agreements. Partners in his firm therefore refer to him as "the ghost."

A review of Law Bulletin Publishing Company's Jury Verdict Reporter from June 26, 2015, shows that "the ghost" had recently resolved some product liability plane crash cases in the amounts of \$30 million, \$11.8 million, \$5 million and \$4 million.

Krzak has extensive experience in catastrophic personal injury litigation but more prominently in aviation disasters, litigation that is often drawn out and highly technical, requiring extensive knowledge of airline practices and procedures, Federal Aviation Administration rules and regulations, cockpit management requirements and aircraft specifications and equipment.

And, not surprisingly, it has led him to form opinions on flight safety, including his one golden rule that, if violated, will cause him to step off the plane and book a different flight. More on that later.

The son of a hard-working telephone company employee and a loving stay-at-home mom who raised five children, Krzak enjoyed a middle class upbringing on the Northwest Side of Chicago. He attended Norman Bridge Elementary School and Holy Cross High School and sometimes watched his father perform close-up magic at Schulien's, the elder Krzak's second job.

And he loved baseball.



“I was a baseball player, a third baseman,” Krzak recalls from his office high above the Chicago Loop. “I started college playing at Upper Iowa University (Division 3). I had an opportunity to play Division 1 and left there. During that time, I took a job as a cargo agent for British Airways. That’s where I almost lost my right arm.”

Krzak was pulling a 5,000-pound pallet along a roller system when the automatic conveyor turned on, knocking him to the ground and catching his hand in the roller system. He was trapped and unable to extricate himself. “I rolled over my own body, tearing just about everything in my shoulder — the labrum, rotator cuff, bicep tendon, all of it. It wasn’t painful for long because I went into shock. It took four surgeries to repair it and, of course, my baseball career was over.”

But another one was about to start. “I made a list of about 15 to 20 facts on a pad of paper that I thought were important and went to see a workman’s compensation attorney. After he asked me about four or five of the questions, he said, ‘Let me see that pad.’ So I gave it to him and he asked me who his competition was. I said no one; that I just put together some things that I thought he would ask. He told me I should go to law school because I thought like a lawyer.”

That got Krzak to thinking about a new career. He took the LSAT test, scored well and in 1993, was accepted and enrolled in law school in DePaul University’s night program where he spent the next four years.

Through a family relationship, he eventually started clerking during the day at one of Chicago’s first-rate law firms, Clifford Law Offices. “Bob Clifford told me when I started, ‘You have an opportunity here. I don’t know you from Adam, but work hard and we’ll see what happens.’”

As a clerk, Krzak learned firsthand how to assemble an airline disaster case when on Oct. 31, 1994, American Eagle Flight 4184 headed to Chicago and crashed in Roselawn, Indiana. Some families retained Clifford Law Offices in that crash, and Krzak worked closely with Clifford and Durkin. “I proved myself to them in that case,” he recalls.

Because it was the first major case on which he worked, Krzak recalls the details vividly. “It was a stormy night and the aircraft entered conditions in which it was icing up. The aircraft lost control because of a sudden unexpected aileron hinge movement reversal and because of the inattentiveness of the crew. Essentially, we alleged that the crew lost situational awareness and the de-icing equipment did

not function properly, a fact we believed the manufacturer was aware of.”

Clifford, Durkin and Krzak represented 16 individuals in the crash. The cases were eventually consolidated before the Northern District of Illinois, where they settled, with the defendants agreeing to a record \$110 million settlement and an apology in open court.

Krzak’s work was so valuable and instrumental to the firm that he had little time to study for the bar exam, as the requirements of filing motions and responses to motions in the American Eagle Flight 4184 crash case came at a time that interfered with his bar exam preparation and study time. “I was already told that I would be an associate at the firm when I passed the bar exam, so finally I went in and told them that I had to study for the bar exam if they wanted me to pass,” he says. With very limited preparation over a handful of days, Krzak passed the bar and was immediately hired in 1997.

Because of the injury he had suffered and the realization that injuries like his dramatically alter people’s lives, Krzak was drawn to personal injury work. “I wanted to be a part of assuring that people who have lost their dreams get fully compensated for their losses.”

Krzak says while he can empathize with injured clients and their families, he also helps them understand what he will be able to do for them, taking them through the various stages of litigation and showing them along the way what he is trying to accomplish. His clients have immediate access to him at all times through cellphones, texts and email.

“When I meet someone for the first time, I feel for them and carefully listen to what they have to say and try to fully understand what their goals are. I want to be sure that we are always on the same page, that we have an open line of communication and that I have exhausted all available resources to assure that their goals are reached. I think that’s a big part of why many of my former clients and I have developed long-standing friendships.”

### **Clients Kindly Helping Others**

In 2015, Krzak settled a 2012 construction accident in Tennessee in which a 29-year-old husband with two small children died while his crew was replacing reflectors on the center line of Interstate 75.

“Nicholas Feller was the foreman of a four-person crew replacing the reflectors on I-75 at 3 a.m.,” he recalls. “A construction

pick-up truck with a flashing sign directing cars to remain to the right was in operation, and a second truck further along the road with a similar sign was also in operation. The crew doing the work was further up the road. Mr. Feller was standing behind the second truck. A semi-tractor trailer passed the first truck on the right but then veered toward the second truck, struck Mr. Feller and the back of that vehicle. There were no skid marks. Mr. Feller and the truck driver were killed.” Feller’s wife retained Krzak.

The trucking company was reluctant to turn over time sheets and duty logs, forcing Krzak to get a court order for their production. The night before Krzak was to depose the trucking company’s director of safety, the company finally handed over literally hundreds of pages of records in no particular order with various time stamps, locations and days of work, requiring him to reassemble all of them in some order to reconstruct the driver’s activities prior to the crash.

In them he found the smoking gun. “In four of the previous five duty days, we put together a string of documents that established that the driver had violated federal trucking standards in that he had exceeded federal 14 hours duty-time regulations.”

In the next day’s deposition, Krzak went to work. “I asked him (the safety director) if he was certain no one at his company would ever violate the federal duty-time regulations (and other questions related to the driver’s activities in the days leading up to the fatal crash). He said he was certain. We then meticulously walked through the work records and got the witness to admit the violations. The witness did not know what to say as it became clear to him that the violations had occurred.”

Sean Martin was the Chattanooga, Tennessee, attorney who represented the trucking company. “Emotions were high in this case,” Martin recalls. “But in the three-plus years we litigated this, I was impressed with how diligent and prepared Michael was in depositions. He left no stone unturned. He even had a few creative approaches to issues that made me think. I knew early on I had to change my approach in the way I was handling the case. I learned some things from him.”

The result was a \$7 million settlement, far above what the defense originally felt the case was worth. “My client’s 9-year-old daughter started her own non-profit company called ‘Heaven Sent It’ which sends a small care package to people who have suffered a similar loss. Recipients receive a letter from her, a necklace with a pendant, a memory box for articles and

a picture frame in which to place a photo of their missing parent. It really touched me to see that she has turned her loss into something great and that her idea continues to flourish,” Krzak says.

While personal injury work is a part of his practice, Krzak and Clifford Law Offices have made their name as a few of just a handful of attorneys across the nation who handle aviation disaster litigation. Families from across the globe contact them for representation following air crashes.

“These families are devastated, many are angry, numb or unable to accept what has happened,” he says. “In many cases, even after the litigation is over, they still have trouble accepting it. When someone is ill and then dies, it is very hard, but when someone says they are catching an early flight to get home so they can join their spouse and children to go skiing and the plane crashes, it is devastating.”

Kara Beutel was excited on Feb. 12, 2009, when her husband, Larry, called to tell her he was coming home early so they could go skiing. “He traveled a lot for work and he had traveled a ton that week,” Beutel recalls. “He was only gone a day and he called to let me know he was taking an earlier flight.”

Beutel was able to change his flight to a regional carrier under the loose auspices of Continental and expected to arrive in Buffalo on Flight 3407 from Newark, New Jersey, earlier than originally planned. But just after 10 p.m., the aircraft crashed into a house on approach to the Buffalo airport, killing all 49 people on board and one person in the house.

“My father-in-law took on the search for an attorney,” Beutel remembers. Through a family connection with a law firm in Chicago, Krzak and the Clifford Law Offices was recommended. “I really wanted a down-to-Earth, Midwestern kind of guy,” she says. “I pretty much decided I was going to retain him before we even met but when we did meet, I knew I had made the right choice. I never felt intimidated. I don’t know anything about the law but he never made me feel stupid. He explained everything very well and kept me informed the whole way. He got to know the kids (now 23 and 21) and he talked to me like we were friends. I knew I was in capable hands.”

“We need to listen to our clients,” Krzak says. “There is nothing more important than listening to what your potential client has to say and understanding what their goals are. When they are finished relaying that to us, we tell them how we can help them, what the litigation process will be like, and then let them decide if they want

to retain us. You have to have empathy for clients and let them have their space. Their lives have been turned upside down, and the last thing they need is pressure from a lawyer to sign a contract.”

### Pushes for Cockpit Recordings

After a major air crash, the National Transportation Safety Board (“NTSB”) releases a transcript of the cockpit recordings. Krzak says these transcripts are not enough. “These transcripts are put together by a group consensus of several people designated by the NTSB which typically include the airline and manufacturer but which does not include representatives of those who have lost their loved one, who are not part of the NTSB investigation process. These transcripts do not give a real feel for what is going on in the cockpit.”

For this reason, Krzak wants and has successfully moved to get access to the actual tapes, which are strictly protected by federal law and their release requires a court order. “Only by obtaining and listening to a cockpit voice recording can you get a true sense of the emotion such as the changes in a pilot’s voice, tempo, volume and inflection, all of which are important to thoroughly identify the root causes of claims of pilot error and to identify other things that are occurring in the cockpit.”

What occurred in the Buffalo crash was not reassuring for anyone flying commercial jetliners.

“Basically, the pilots failed to maintain situational awareness. They were talking about non-essential things and not paying attention to what was going on. On approach, their speed got dangerously low. The stick (control) began to shake to warn them that they were getting too slow and they did nothing to increase their air speed. The stick (control) then automatically pushed forward (the correct maneuver to avoid a stall). If they would have just left it alone, they would likely have gained enough air speed, and the plane would not have crashed. Instead, the captain pulled back with 80 to 90 pounds of pressure twice, overriding the stick (control), causing the plane to lose even more speed. I think he looked and saw how close to the ground they were and panicked. The plane stalled and crashed.”

That information and other data revealed that the pilots had violated the sterile cockpit rule, meaning there are to be no non-pertinent discussions below 10,000 feet. The aircraft speed can be seen on what Krzak likens to a barber pole descending into a red area prior to the stick shaker

warning. The pilots had ample opportunity to correct the situation, had they not been distracted with their extended conversation.

They didn’t.

During the litigation, the regional carrier, which was affiliated with but not owned by Continental Airlines, declared bankruptcy, slowing the litigation. The bankruptcy stay was lifted and ultimately, his clients’ cases were settled for confidential amounts following a court-ordered mediation.

It was during that mediation that another of Krzak’s techniques enhanced his client’s settlement. “We make a video presentation, a documentary, which describes who the individual was and the impact the victim’s death has had on his or her loved ones through interviews with the surviving spouse, children, friends, family, co-workers, etc. It is not admissible in court, but it is in mediation. It is a compelling tool which forces the mediator and the decision makers to better understand the loss than they would on paper.”

Beutel was not satisfied with just a monetary settlement and, through Krzak, petitioned the National Transportation Safety Board to again recommend to the FAA that all aircraft be equipped with an aural stall warning, instead of just instrumentation. The NTSB made that recommendation but to date, the FAA has not acted on it. “Many clients become activists and seek change that will prevent this from happening to someone else,” he says. “Since it is important that our clients’ goals be met, we make sure that they have the resources necessary to pursue such efforts.”

Extraneous and unnecessary conversation in the airplane cockpit is a common theme in the crashes he has investigated, Krzak says, so much so that he lives by a simple, golden rule: “If I walk onto a plane and the cockpit door is open and the pilot and co-pilot are laughing, talking and being unprofessional, I get off the plane and find a different flight.”

Sound extreme? Consider the case of a crash of ComAir Flight 5191 on Aug. 27, 2006, in Lexington, Kentucky, in which two loquacious pilots took off from the wrong runway, crashing into a fence and trees, killing nearly everyone on board.

Blue Grass Airport was under construction as the aircraft taxied down the runway at 6:09 a.m. in full darkness. Instructed to turn left and then left again, the plane correctly made the first left as the pilots engaged in a trivial conversation unrelated to flying the aircraft. As a result of their inattention, they actually crossed the main, lighted runway instead of turning left and proceeded to the unlighted,

general aviation airstrip. Because the tower employee turned his attention to another task, he did not see them begin to taxi up the wrong runway.

The pilots realized their error as the aircraft approached the end of the runway and tried to pull up, striking a fence and several trees outside the airport property before falling into a field, killing 47 passengers and two of the three members of the flight crew. Only the co-pilot survived the crash. Krzak represented a half dozen families and in typical fashion, launched a vigorous examination of the facts, including getting a judge to essentially close the airport to give counsel for the victims an opportunity to examine the layout and construction before it could be altered.

“Michael attacked the file,” says Keith Williams, a Nashville attorney who served as co-counsel on the case. “He didn’t just work it. I would describe his style as aggressive, thorough and very prepared. He is a very good lawyer. He has goals for his depositions and a battle plan. We worked together on that one for about two years and later, some other cases as well. He’s a great lawyer.”

### Recreating Accident Conditions

As part of the Blue Grass Airport inspection, the Clifford team chartered a similar aircraft and mounted a camera to show what those pilots would have seen at that time of the day. They also hired a vision scientist to assure that the time the exemplar aircraft was taxiing would replicate the lighting conditions so that the footage would be admissible at trial.

The footage tracked the route of the aircraft and what the pilots would have seen, as well as what they should have seen. From that they were able to create an animation based on the flight data and the video, which tracked the plane and its surroundings, mixing in actual footage from the aircraft of the doomed airliner where possible.

The defense pursued its theory that the confusion was caused by the construction and the fact that the controller turned away. But at the end of the day, the lack of situational awareness caused by incessant and irrelevant conversation was indisputable.

“The minute I read a transcript (or listen to a cockpit voice recording), the discipline or lack thereof in the cockpit becomes evident. Bad behavior in the cockpit makes planes go down. It’s that simple. That’s why if I hear the pilots yukking it up, I get off the plane.”

Krzak has forged an enviable reputation among his peers as a professional who

opposing counsel can trust to move cases effectively through cooperation. “I’ve known Michael about four or five years,” says Elizabeth Graham, assistant general attorney for Union Pacific railroad. “We’ve had large cases together and he is always professional and easy to work with. Just recently, we were in court on a motion to compel and although it was adversarial, we walked out of the courtroom together. The judge was very pleased that we were able to work out deadlines and cooperated with each other. (Krzak) represents his clients effectively, and we are able to get so much more done.”

The high stress and demands of his job are balanced by a dedication to physical activity and devotion to his young family. Krzak often arises at 4:30 a.m. to work out before heading to the office by 7:30 a.m., so that he can spend evenings with his wife, Nicole, and daughters, Emma, 9, and Faith, 7. “Nicole is a constant source of support for me; she made the decision to leave teaching and stay at home to be there for our children so that I can keep up the demanding travel schedule that working on these types of cases requires.” She draws a line: “Tuesdays are family game night,” he says.

Krzak has done half marathons in a few states, the Chicago Marathon and last year did a considerable amount of bicycling, logging 5,600 miles. Heart disease runs in the family, something he is eager to avoid with young children. “If I’ve learned one thing in seeing the losses that the countless families I have represented have gone through, it is that the most precious gift we can give our children is time. We really strive to spend as much family time as we can together. We are instilling the love of the outdoors and the importance of health and healthy relationships in our children, often taking them on bike rides, walks, fishing and kayaking.”

He says he cherishes every minute with his family because if his work has taught him one thing, it is the capricious nature of fate. “It’s a common theme in many of the airline disasters that someone ends up taking a flight on which they were not originally scheduled to be,” he says. ■