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Firm Creates Niche From Helicopter Crashes

Doing Their Own Probes, Partners Get Dozen Cases a Year Without Advertising

By **Tim Hay**
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SAN FRANCISCO — Imagine the late-night television commercial: ‘Have you or someone you love been injured in a ... helicopter accident?’

Plaintiffs’ firm O’Reilly & Danko in San Mateo hasn’t had to resort to that. Believe it or not, there is more than enough work investigating and litigating the nation’s many helicopter crashes; advertising isn’t necessary.

“Helicopters tend to crash a lot,” said attorney Mike Danko, who has litigated 20 cases since his partner, Terry O’Reilly, cultivated this legal niche 30 years ago.

“This is a big industry that operates under the radar,” he said. “There are 500,000 to 1 million passenger rides a year. They are extremely dangerous, and there is little [Federal Aviation Administration] oversight.”

Helicopters — many of them old and in disrepair — are used extensively nationwide for firefighting, agricultural work and sightseeing tours. Danko said there is a crash at least every couple of months. The firm takes on 10 to 12 cases a year, he said.

In Hawaii, where tour operators fly perilously close to volcanoes so vacationers can get good photographs, two copters went down in April alone, he said.

“Tourists think it’s neat to fly over a lava field at 500 feet, but it’s suicidal,” O’Reilly said.

His first case — and the genesis of a strange legal specialty — involved a helicopter being used for log removal in the Sierra Nevada. When the helicopter was flying in close among the trees, a tail rotor hit a branch, bringing down the aircraft.

O’Reilly, as is most often the case, negotiated a settlement.



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Terry O’Reilly, left, and Michael S. Danko stand at the San Carlos airport in front of a helicopter belonging to a friend of Danko’s. Tour operators account for by far the most helicopter crashes each year.

“It’s very rare to actually try a helicopter case all the way to a verdict,” he said.

But it happens occasionally. Among the firm’s biggest victories was a case 10 years ago, a \$9 million verdict against Bell Helicopter when a Bell 214 crashed because of mechanical failure as it removed fir logs from a forest in the Pacific Northwest.

The firm also won an \$11 million settlement for a Brentwood woman after a 1995 helicopter crash at a charity event at the Livermore airport injured her and killed her husband. The award, however, was overturned on appeal. “These crashes are almost always fatal,” O’Reilly said. “Nobody ever designed a copter with crash-readiness.”

Several attorneys who have gone up against the firm in court, including the in-house lawyers for several helicopter manufacturers, declined to comment.

One attorney, who did not want his name used, said, “With some opposing counsel, you admire what they do. Others, you don’t agree with their tactics. I would put [O’Reilly & Danko] in the latter category.”

He declined to elaborate.

Danko said that, after a crash, the National Transportation Safety Board investigates. But that agency is swamped with other investigations, usually higher-priority plane crashes in which more than one or two people are killed. Investigators are usually looking into 60 to 70 crashes at a time, he said.

“Manufacturers blame pilot error, and the NTSB just accepts it,” Danko said.

Keith Holloway, an NTSB spokesman, took issue with that.

“We do have a large workload,” he said. “We investigate hundreds of incidents a month, but we look at each one as a priority.”

According to the agency, 1,739 general-aviation accidents took place in 2003, the last year for which the NTSB provides statistics.

The NTSB has said that the FAA’s Hawaii offices are short-staffed and underfunded and that regulation of the helicopter-tour business has grown too lax.

Using retired NTSB investigators, who have much smaller workloads, the O'Reilly & Danko attorneys launch their own probe. With some help from metallurgists and other scientists, they discover about half the time that faulty maintenance was behind the crash.

That was the case in the death of Russell Holliday, a 35-year-old sightseeing pilot who crashed in 2003 into a volcano in Hilo, Hawaii.

"He had two kids and was looking to get into safer work," said Darlene Holliday, the pilot's mother. "At least Russell's wife and kids don't have to worry about money now."

After hearing about the crash, O'Reilly & Danko contacted the Holliday family.

"We were in such a stupor, we didn't even know why they were calling us," Darlene Holliday said. "But they said they thought they knew which part it was [that had malfunctioned]. They spent three years fighting the companies. [O'Reilly] didn't take any crap from anybody."

The case was settled for an undisclosed amount.

Tour operators, who account for by far the most helicopter crashes each year, usually get a \$1 million insurance policy on their aircraft and insure each seat for an additional \$100,000, Danko said.

"After a crash, they just turn around and get a new helicopter, and they're back in business," he said. "The lawsuits don't seem to pose a risk to the operators."

Helicopters can crash-land safely only when they have a wide area to do so, the attorneys say. This is seldom the scenario in dense forests or in congested cities such as Las Vegas, where tourists are clamoring for an aerial tour.

So with the FAA failing to clamp down, and independent operators buying new aircraft after a crash, business likely will stay good at O'Reilly & Danko.

"There are very few lawyers with this specialty," Danko said.