

Kline & Specter has achieved 26 verdicts and settlements of \$10 million or more in Pennsylvania since 1994 – more than any other law firm and as many as the next top three combined. The following is from The Legal Intelligencer’s May 2013 “170th Anniversary Lifetime Achievement Awards” edition:

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PA.'S LARGEST VERDICTS & SETTLEMENTS TRENDING HIGHER

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Of the Legal staff

A look back at Pennsylvania's largest verdicts and settlements over the last 19 years reveals a trend of larger awards over the past three years. The data also shows an overall average of about \$34.5 million since 1994 — when The Legal Intelligencer began tracking each year's largest verdicts and settlements — thanks in part to a few billion-dollar-plus results.

In addition, there doesn't appear to have been any significant change in the annual averages following Pennsylvania's adoption of the certificate of merit requirement in 2003.

Since 1994, The Legal's annual magazine, PaLaw, has compiled a list of the largest verdicts and settlements in Pennsylvania as reported in the newspaper. Altogether, PaLaw documented 834 verdicts and settlements between 1994 and early 2013.

The \$34.5 million figure is skewed by the five largest results, all of which were more than \$1 billion.

Of the 834 top verdicts and settlements since 1994, the lowest result to make it on the list was the \$1.2 million verdict in the 2005 Dauphin County Court of Common Pleas

medical malpractice case *Fromm v. Hershey Medical Center*.

Top 10 Firms/Agencies Verdicts/Settlements \$10M or Higher

Kline & Specter.....	26
Saltz Mongeluzzi Barrett & Bendesky.....	14
Berger & Montague.....	6
The Beasley Firm.....	6
U.S. Attorney's Office for the Eastern District of Pennsylvania.....	5
Litvin Blumberg Matusow & Young.....	5
Feldman Shepherd Wohlgelemer Tanner Weinstock & Dodig.....	5
Milberg Weiss Bershad Hynes & Lerach.....	4
Duane Morris.....	4
Pennsylvania Attorney General's Office.....	4

The largest result, meanwhile, was the \$11.3 billion settlement in *In re National Tobacco Settlement*, which represented the state's portion of a \$206 billion nationwide settlement between the country's four largest cigarette manufacturers and the attorneys general of 46 states and was approved in the Philadelphia Court of Common Pleas in 2000.

Removing the five results over \$1 billion from the equation brings the average result down to about \$14.4 million.

The annual average for 1994 —

excluding the \$1.3 billion settlement in the asbestos mass tort case *Georgine v. Amchem Products* — was about \$5 million, while the average in 2012 — excluding last year's \$1.17 billion verdict in the patent infringement case *Carnegie Mellon University v. Marvell Technology Group* — was about \$23.2 million.

In the intervening years, the annual averages remained mostly flat before trending higher beginning in 2010. But the late 1990s did see a few significant spikes caused by inordinate large results.

For instance, after an average of about \$6.2 million in 1996, the average for 1997 ballooned to \$25.9 million, largely because that year saw both the \$325 million settlement in the U.S. District Court for the Eastern District of Pennsylvania fraud case *United States v. SmithKline Beecham Clinical Laboratories* and the \$140 million verdict in the Commonwealth Court insurance case *Kaiser v. Corporate Life Insurance*.

The average dipped back down to about \$6 million the following year, but spiked again in 1999 to about \$29.9 million, on the strength of the \$907 million verdict in the Philadelphia Court of Common Pleas wrongful death case *Maddux v. Einhorn*, the \$60 million Philadelphia Court of Common Pleas verdict in the class

action *Crawley v. DaimlerChrysler* and the \$38.5 million settlement in the U.S. District Court for the Middle District of Pennsylvania fraud case *United States v. Highmark*.

Following 2000's annual average of \$19.7 million, the yearly averages between 2001 and 2009 hovered mostly in the \$8 million to \$14 million range.

But the period from 2010 to 2012 saw annual averages climb to and remain above \$20 million.

Alan Feldman of Feldman Shepherd Wohlgelernter Tanner Weinstein & Dodig in Philadelphia said the plaintiffs practice has changed significantly since he first began practicing.

"I still remember when I got my first million-dollar verdict," he said. "They were very rare. There were maybe one or two a year. Now they happen once a week, or it seems like that."

Feldman attributed the rise in verdict and settlement amounts over the past two decades in part to increasingly aggressive plaintiffs attorneys who gradually began assigning higher valuations to cases.

As time went on, Feldman said, judges and juries also changed the way they viewed cases. Feldman also pointed to the increasing role of technology in the courtroom, which plaintiffs attorneys now use

to present damages to juries in more interesting and dramatic ways.

These technological advances have "raised the bar, because juries take these cases perhaps more seriously," Feldman said.

In addition, Thomas R. Kline of Kline & Specter in Philadelphia said it's his sense that there are fewer cases being tried, but there is still the occasional big jury verdict, which in turn has allowed settlement amounts to continue to trend upward.

Kline said large verdicts serve as "reminders and benchmarks and

mileposts for the defense and the insurance industry" that sometimes settling is the more prudent choice than going to trial.

In addition, Kline said he believes defendants in jurisdictions outside of Philadelphia are more willing to settle meritorious cases in order to avoid negative publicity.

The Firms

Over the years, 219 verdicts and settlements of at least \$10 million were reported. Among those high-dollar results, a select number of firms and agencies appeared multiple times, led by Kline & Specter, which had 26 such results, including the \$109 million wrongful death verdict in *Goretzka v. West Penn Power* from 2012.

Saltz Mongeluzzi Barrett & Bendesky's 14 such results gave the firm the second-most appearances, including the \$75 million verdict in the 2003 personal injury case *Tuski v. Ivyland Café*.

Berger & Montague and the Beasley Firm each had six results in the eight-figure range, followed by Litvin Blumberg Matusow & Young, Feldman Shepherd and the U.S. Attorney's Office for the Eastern District of Pennsylvania, which each appeared five times.

Milberg Weiss Bershad Hynes & Lerach, Duane Morris and the Pennsylvania Attorney General's Office were each involved in four results above \$10 million.

The Venues

The data compiled reveals that, of the 834 verdicts and settlements documented, the vast majority of large results occurred in the Philadelphia Court of Common Pleas and the U.S. District Court for the Eastern District of Pennsylvania.

In fact, out of the 834 largest results over the past 19 years, 387—46 percent—occurred in Philadelphia.

Similarly, the Philadelphia Court of Common Pleas accounted for 19—38 percent—of the top 50 verdicts and settlements.

Fifteen of those were verdicts.

The largest result in Philadelphia, aside from the \$11.3 billion tobacco settlement, was the \$907 million Maddux verdict.

The verdict was the sixth-largest result in the past 19 years.

Meanwhile, of the total 834 verdicts and settlements documented, the Eastern District accounted for 142, or 17 percent, of them.

Of the top 50 verdicts and settlements, 18—36 percent—occurred in Eastern District federal court.

The biggest result in the Eastern District over the past 19 years—and the third-largest overall—was the \$1.42 billion settlement in *United States v. Eli Lilly & Co.* in 2009.

After the Philadelphia Court of Common Pleas and the Eastern District federal court, the jurisdiction to make the most appearances among the top verdicts and settlements of the past 19 years was the Allegheny County Court of Common Pleas, which accounted for 46, or 6 percent, of the total 834 results.

There's a significant dropoff on the list of total top verdicts and settlements after Philadelphia, the Eastern District and Allegheny County.

The U.S. District Court for the Western District of Pennsylvania appeared among the top verdicts and settlements 33 times over the past 19 years—about 4 percent of the total list.

It did, however, have four cases in the top 50.

In fact, two of those cases—the \$1.7 billion settlement in the 2000 insurance class action *Policyholders v. Metropolitan Life Insurance* and last year's \$1.17 billion *Carnegie Mellon* verdict—made it into the top five.

The next-closest county in the overall standings was Luzerne, with 25, or 3 percent, of the total 834 verdicts and settlements, but no appearances on the top 50 list.

Meanwhile, the U.S. District Court for the Middle District of Pennsylvania and the Delaware County Court of Common Pleas each accounted for 21 cases on the list.

The Middle District and Delaware County each appear once among the top 50 verdicts, the former with the \$38.5 million settlement in the 1999 fraud case Highmark, and the latter with the \$38.2 million verdict in the 2004 motor vehicle accident case Robley v. PennDOT.

Montgomery County was close behind the Middle District and Delaware County in the overall standings, with 19, or about 2 percent, of the 833 verdicts and settlements. It made no appearances in the top 50, however.

In fact, not every venue with a relatively high number of top verdicts and settlements over the past 19 years had a case that made it into the top 50.

For example, Lackawanna County had 17, Bucks County had 15 and Chester County had 14—about 2 percent each—of the total 834 verdicts and settlements, but none cracked the top 50.

Likewise, a few outliers in the top 50 had relatively few other notably large results in the past two decades. The Berks County Court of Common Pleas, for instance, had the 43rd-largest result overall with the \$46.2 million verdict in the 2010 wrongful death case Torres v. Wachovia Bank, but had only three other cases on the total list.

In addition, the Commonwealth Court, in its original jurisdiction, took three spots on the top 50 list with the \$140 million Kaiser verdict in 1997, the \$90 million verdict in the 2000 negligence case Commonwealth v. Monsanto and the \$51.9 million verdict in the 2010 consumer

fraud case Commonwealth v. Johnson & Johnson.

But beyond those three cases, the Commonwealth Court appeared among the largest verdicts only four other times since 1994.

And while, perhaps predictably, the majority of the largest county verdicts and settlements occurred in the most densely populated counties in Pennsylvania, 36 of the state's 67 counties were represented among the 834 total results.

Kline said his experience over the years has been that jurors, regardless of the county, have been responsive to "good-to-excellent liability cases."

However, in cases where liability is less clear, jurors in most counties have proven difficult to convince, Kline said.

Types of Action

In examining the trends from 1994 to the present, it's worth noting that there does not appear to have been a significant dropoff in annual averages following Pennsylvania's 2003 adoption of the certificate of merit requirement.

The total average of the top 326 verdicts prior to the changes in 2003 was \$15 million, not including billion-dollar verdicts. The average of the 503 verdicts from 2003 forward was \$14 million, not including billion-dollar verdicts.

Part of the explanation for this may be that, while the list of top verdicts over the past 19 years has included 182 medical malpractice actions—nearly 22 percent of the total—only four of them were large enough to crack the top 50: the \$100 million verdict in Albright v. Cavarocchi, the \$78.5 million verdict in Nicholson-Upsey v. Touey, the \$55 million verdict in Gault v. Norwood and the \$49 million verdict in Caruso v. Neumann Medical Center, all of which occurred in Philadelphia.

Feldman said he would not have expected the certificate of merit requirement to affect case outcomes

because its purpose was to remove frivolous suits from the pipeline.

While only a small group of medical cases made the top 50, a look at all 834 results shows that medical cases have made, by far, the most appearances in the top verdicts and settlements over the years.

Beyond those, there were 81 negligence cases, 78 motor vehicle cases, 67 wrongful death cases and 65 products liability cases, followed by another steep dropoff to the next-most-prevalent type of action, personal injury, of which there were 37.

There were also 27 premises liability cases, 25 breach of contract cases, 23 construction cases, 19 civil rights cases, 18 asbestos cases, 18 class actions, 18 workplace accident cases, 16 employment cases, 12 insurance cases and 12 securities cases.

In addition to those, antitrust, assault, bad faith, breach of contract, breach of fiduciary duty, commercial tort, consumer fraud, contract, defamation, dram shop, Employee Retirement Income Security Act, Federal Employers Liability Act, fraud, informed consent, intellectual property, land use, legal malpractice, lender liability, real estate, Racketeer Influenced and Corrupt Organizations Act, sexual harassment, shareholder, strict liability, Superfund, underinsured motorist and whistleblower actions all made single-digit appearances over the years.

However, antitrust, breach of contract, commercial tort, consumer fraud, defamation, fraud, intellectual property, RICO and whistleblower suits all made appearances among the top 50.