



## Kline & Specter Eletter - October 2020

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## Kline & Specter achieves top verdicts in National Law Journal study

Kline & Specter won 6 of the 32 largest product liability verdicts in the country over the last five years, the most for any law firm in the United States, according to a special publication just released by *The National Law Journal*. The firm also placed two other verdicts among the nation's largest in other practice areas. The biggest product liability case – and second in the nation overall for any category – between 2015-2019 was the \$8 billion punitive verdict won last year against Johnson & Johnson and subsidiary Janssen in a case involving Risperdal, the anti-psychotic drug found to be of high risk for gynecomastia, the growth of excessive breast tissue in young males. **Tom Kline** was co-lead counsel along with **Jason Itkin** of Arnold & Itkin. Kline and Itkin shared trial responsibilities and Kline gave the closing argument in the trial. Co-counsel was the firm's **Christopher Gomez**. **Stephen Sheller** of Sheller PC is also counsel in the Risperdal litigation. Another Risperdal case that tried to a \$70 million verdict, Yount et al v. Janssen, in which Kline & Specter



was co-counsel, came in as No. 24 on the national list.

Other Kline & Specter product liability verdicts cases that made the list involved vaginal mesh, the medical device surgically implanted to relieve organ prolapse and urinary incontinence but later eroded in many women, causing severe pain and an inability to have sexual intercourse. A \$120 million verdict – and No. 13 between 2015-2019 — was won by **Tracie Palmer** serving as lead counsel and **Braden Lepisto** and **Elia Robertson** as co-counsel, while an \$80 million verdict finished as No. 19, with that case tried by **Tom Kline**, **Michael Trunk** and **Kila Baldwin** as co-lead trial counsel and with **Christine Clarke** and **Philip Pasquarello** as co-counsel. The firm's \$57.1 million vaginal mesh verdict – with Baldwin as lead counsel and Palmer and Robertson as co-counsel — was the 28th largest nationally, while a \$41 million verdict placed No. 32 on the five-year list, with Kline and Baldwin as co-lead counsel and Robertson, Pasquarello and **Tom Bosworth** as co-counsel.

The firm also won the nation's 11th largest medical malpractice verdict from 2015-2019 with a \$47 million award for a baby injured in a post-birth procedure; that verdict, in a case tried by **Dominic Guerrini** and **Mark Polin**, was the largest medical malpractice verdict in federal court in Pennsylvania history. Also, **Regan Safier** won a nearly \$42 million verdict for a child who suffered a forceps injury at birth that resulted in severe brain damage. The 2017 bench trial verdict was the largest-ever medical malpractice award in federal court in the Middle District of Pennsylvania. The 22nd largest wrongful death verdict was a \$46.5 million jury decision against a security firm sued over the shooting deaths of two employees by a disgruntled former employee at a Kraft Foods plant in Northeast Philadelphia. **Shanin Specter** was lead counsel with co-counsel Guerrini and **Patrick Fitzgerald**.

## Waldenberger wins \$2.3 million verdict in Lycoming lawnmower case

In one of the first pandemic-era verdicts in Pennsylvania, **James Waldenberger** won a \$2.3 million jury award for a man who had his big toe and part of his foot severed when his ride-on lawnmower flipped over on sloped terrain. The verdict came for Harold and Veronica Getting and against the company that rented the lawnmower, Mark Sales and Leasing, with the company found

# The Legal Intelligencer

THE LATEST LAW JOURNAL IN THE UNITED STATES 1943-2020  
PHILADELPHIA, WEDNESDAY, SEPTEMBER 9, 2020 VOL 242 • NO. 40 \$5.00 An ALM Publication

## How COVID Boosted Tricky Case To a \$2.3M Verdict in Midstate Pa.

BY MARK MITCHELL  
10th Legal Int'l

The latest brought by a man injured in a self-storage house motor accident against the company that sold him the machine had some troubling problems.

To begin with there was the fact that he'd been riding on his own severely damaged just when the accident happened. Also, the motor he had been sold was significantly smaller than the one he'd used previously, and, to top things off, there was a label on the motor that indicated the device became unusable on severely hilly terrain.

Plaintiff lawyer James Waldenberger of Kline & Seltzer said he had concerns about bringing a tort motor liability case before a mixed Pennsylvania jury, thinking compensation negligence could be a major hurdle. But, after Waldenberger stressed the theme of accepting responsibility—and litigated some events that transpired during the trial as a result of the COVID-19 pandemic—



WALDENBERGER

Learning, County jury Sept. 4 awarded his client, Michael and Veronica Getting, \$2.3 million, finding them only 10% liable for the injuries.

"We went in there accepting responsibility and the defense, having people that weren't truthful and making ridiculous arguments and then leaving—and frankly not accepting any responsibility during the trial ... I think it definitely influenced the jury,"

Waldenberger said. The case centers from allegations that Williamson Home Goods Inc. sold Mark and Veronica Getting a motor that was smaller than the one he previously owned and also did not use stabilizing weights.

Staff writer: M. T.

85 percent liable. Waldenberger was able to convince the rural county jury of his client's claim despite the fact that he was riding the mower on a severely hilly terrain and that the machine bore a label cautioning that it became unstable under such conditions.

But, as Waldenberger told *The Legal Intelligencer*: "We went in there accepting responsibility and the defense, having people that weren't truthful and making ridiculous arguments and then leaving—and frankly not accepting any responsibility during the trial ... I think it definitely influenced the jury." For one thing, he said, the leasing company was negligent in that it recommended Getting, 74, rent a mower that did not use stabilizing weights and was smaller than the one he had used before. The salesman also saw Getting's yard and the severe slope when he delivered the lawn mower. The amputation suffered by Getting causes him chronic pain and affects his ability to walk or go up stairs. Waldenberger said the jury may have become upset with the testimony of the owner of the company and the fact that he left afterward and did not return to the trial or, as Waldenberger put it, "He lied and then he left." The trial lasted five days. The jury awarded \$1.5 million to Getting for pain and suffering, \$300,000 for disfigurement and \$500,000 to Veronica Getting for loss of consortium. ([Read the article](#)) After the trial, Waldenberger wrote an article for *The Legal Intelligencer* about trying a case during the pandemic. ([Read his article](#))

## Settlement of \$3.1 million reached in child sexual abuse case



Bezar



Bosworth



Nocho

**Nadeem Bezar, Tom Bosworth, and Kyle Nocho** obtained a \$3.1 million settlement for two victims of child sexual abuse who lived in a group foster home operated by ChildFirst Services, Inc. The victims were abused over several months by a staff member at the facility in Southwest Philadelphia where as many as 16 children were housed at any one time. The

settlement was reached despite challenges in the case regarding establishing notice of the abuse. It was also complicated when ChildFirst joined the attacker as a defendant in the case, opening the possibility that the jury would apportion all or some percentage of fault to the perpetrator. The settlement was reached prior to production of expert reports and depositions of the victims. The victims were boys who were abused over several years, one when he was 15-16 years old and the other when he was 13. The attacker, Stephen Brantley, was charged with a number of crimes, tried and convicted, and sentenced to a minimum 21 years in prison. ChildFirst Services is a non-profit corporation that operates a number of group homes throughout Philadelphia and other counties in Pennsylvania. Bezar and his colleagues at the firm have won numerous verdicts and settlements in child abuse cases, including verdicts obtained by Bezar of \$11 million and \$4.5 million over the past several years in which the defendants included a child placement agency, Defender Association of Philadelphia, a foster care agency and foster parents.

## Becker, Laidacker score Supreme Court win in \$70M Risperdal case

Appellate attorneys **Charles “Chip” Becker** and **Andra Laidacker** won a significant victory when the Pennsylvania Supreme Court declined to hear an appeal from Johnson & Johnson seeking to strike down a \$70 million verdict involving Risperdal, the anti-psychotic drug linked to the abnormal growth of breasts in boys and young males. The verdict was won four years ago against J&J subsidiary Janssen Pharmaceuticals Inc. for a 20-year-old man who experienced permanent breast growth and has suffered psychological and emotional damage as a result of taking Risperdal beginning when he was four years old. The Superior Court had previously rejected J&J’s numerous arguments, including that \$70 million was excessive to compensate the plaintiff, known only as A.Y., for psychological and emotional damage, and it had upheld claims that the company failed to warn of the possible risks of Risperdal and gynecomastia. The Superior Court also had remanded the case for a next phase on punitive damages. “We are pleased that allocatur has been denied and we look forward to trying the punitive damages phase of the case when jury trials resume early next year,” co-lead counsel **Tom Kline** and **Jason Itkin**, of Houston-based Arnold & Itkin LLP, told Law360 in a joint statement following the Supreme Court’s decision. Also representing the plaintiff in the case are **Christopher Gomez**, of Kline & Specter, **Cory Itkin**, and **Stephen Sheller** of Sheller PC. The punitive damages phase of the case will next be scheduled for Philadelphia Common Pleas Court.



Becker



Laidacker

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## Kline and Williams named Best of the Bar



**Tom Kline** and **David Williams** were named winners of the *Philadelphia Business Journal's* 2020 Best of the Bar Awards. The awards are based upon a nominee’s achievements since June 30, 2019. It was during that time (Oct. 8) that Kline won his \$8 billion punitive verdict against Johnson & Johnson in a case involving Risperdal, the anti-psychotic drug found to have a high risk of gynecomastia, the growth of abnormal breast tissue in boys and male adolescents. The verdict was the largest in the nation in 2019. Kline was also recognized for his work in helping to achieve a Pennsylvania Supreme Court decision not to hear an appeal of a \$70 million Risperdal verdict in another case, thus preserving thousands of Risperdal lawsuits. Kline and Williams worked together representing the family of Timothy Piazza, the college student who

was killed in a fraternity hazing tragedy at Penn State; that work has produced rules changes at the school as well as Pennsylvania legislation allowing felony charges in hazing incidents. Williams represented a whistleblower in a case that resulted in a \$41.6 million payment by a company resulting from an alleged kickback scheme that defrauded Medicare. In September 2019, Williams was sworn in as president of The Barristers’ Association of Philadelphia, a 70-year-old organization that addresses the professional needs and development of black lawyers and takes a pro-active role fighting injustices in society. As its president, Williams has, among other things, helped lead the fight against unfair restrictions of Pennsylvania’s mail-in voting system and testified before a City Council committee on legislation to provide access to free legal representation for residents facing eviction. *The Philadelphia Business Journal* will host a virtual event on Oct. 29 to honor the award winners and will profile the honorees in a special editorial section to be published on Oct. 30. For more information about the virtual



## Specter in article, airwaves on whether Trump can be sued for spreading COVID

With President Donald Trump diagnosed with the coronavirus, **Shanin Specter** opined in an editorial for [NBC News](#) and in an interview with **Michael Smerconish** on Sirius XM's "[The Michael Smerconish Program](#)" on whether the president could be successfully sued for giving someone else the disease. His conclusion: It would be extremely difficult to win a lawsuit against the president.



Smerconish

Specter

Specter said that although Trump was negligent because he appeared at a campaign fundraiser at his golf course in Bedminster, N.J., with some 200 people — though he was aware at the time that close adviser Hope Hicks was infected — it would be tough for someone at the event and later stricken with COVID to prove they got it from Trump. “They would have to show they got COVID from the president to the exclusion of anyone else in the world and I don’t think folks would be able to prove that,” he told Smerconish. Specter, who teaches law at UC Hastings, UC Berkeley, Stanford and Penn, said it would also be challenging to prove a case against the president for the Secret Service agents who drove with him when he briefly left the hospital to wave at supporters outside. At best, Specter said, they could get workers’ compensation because they were “injured while on the job by a co-worker, the president.” And Trump could probably successfully claim that in greeting people he was acting in his official capacity as president, which would make him immune from legal action. “They don’t have a claim for a lot of reasons,” Specter told Smerconish, adding, “And that’s a little frustrating for me looking at that situation because they were put in an untenable position. They were told by their boss to get in the car with the president. He wasn’t even wearing an N-95 mask. His conduct there is worse than negligent. His conduct there is reckless. And yet they would have no claim against him.”

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## Firm files civil suit vs. college in sexual assault case



Kline



Williams

**Tom Kline** and **David Williams** filed suit against Allegheny College in western Pennsylvania on behalf of a student who was sexually assaulted at gunpoint in her campus dormitory. The lawsuit, filed in U.S. District Court in Erie, claims the college, a private liberal arts school in Meadville, was both negligent and reckless in providing on-campus housing and security to its students. It alleges that inadequate security, including a malfunctioning key card system and a lack of both exterior and interior building cameras at the dormitory, led to the assault of the victim, identified in the complaint only as Jane Doe, at around 1:30 a.m. last Dec. 10. There had

been multiple forcible sex offenses at the dormitory from 2016 to 2019, according to police logs at the college, as well as reports of suspicious people and trespassers on campus during that time. No one has been criminally charged in the case, according to news reports. ([Read article](#))

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## Baldwin testifies before Senate panel on venue rule

**Kila Baldwin** told the Pennsylvania Senate Judiciary Committee that the current rule requiring that a victim of medical malpractice file suit only in the county in which they suffered their injury is “unfair.” She told the panel: “Any other plaintiff in any other practice area can sue where the incident occurred or where they are located ... Now, hospitals and health care providers are a protected class under the venue rule.” Baldwin, who is president-elect of the Pennsylvania Association for Justice, said at the committee’s informational hearing that



medical malpractice clients should also be able to file suit, for instance, in counties in which large parent companies of hospitals are located. She testified that it can be difficult to get a fair trial in less-populated rural counties where a hospital is a major employer and potential jurors often have friends or relatives who work there. “That’s not fair to the victim who deserves their day in court,” she said. Baldwin noted that the opposite is not true, that when, for instance, a hospital sues a patient for not paying a bill, the parent corporation of the hospital can make the patient travel across the state to their location to litigate the matter. She also disputed the notion that victims are more likely to win verdicts in venues such as Philadelphia, noting that defendants win 60 percent of medical malpractice cases in the city. Baldwin further cited statistics showing that most victims never sue, that while there were 7,881 “serious events” involving medical malpractice in 2017, only 1,449 resulted in lawsuits. ([Watch video](#))

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## Kline School of Law’s Stern Lawyering Clinic details year’s achievements



Andy Stern



Gwen Stern

The Kline School of Law’s Andy and Gwen Stern Community Lawyering Clinic located at Drexel’s Dornsife Center released an annual report showing that it helped several hundred members of the West Philadelphia community. The clinic was given a \$1.65 million donation last year by the firm’s **Andy Stern** and his wife, **Gwen Stern**, a professor at the Thomas R. Kline School of Law. The Sterns also volunteer their time to the clinic, which provides free legal assistance to people who cannot afford it. The Stern clinic helps with a wide range of legal matters, among them property matters, employment

discrimination, benefits appeals and post-conviction relief. The annual report showed it represented 24 people in legal proceedings, gave legal advice in seven cases, provided community legal education to 113 people and referred 99 to other legal service providers. In one case, the clinic obtained nearly \$12,000 from a city-funded grant program that assists residents in paying outstanding property taxes. It assisted eight community members transfer title of their homes into their own names. In criminal matters, it helped three people obtain pardons and one to get an expungement. In broader litigation, the clinic filed an amicus brief with the Pennsylvania Supreme Court supporting the ACLU’s challenge to cash bail in Philadelphia. Further, it assisted with the Promise Zone Research Connection to create a governance structure and bylaws, and it worked with the Graterford Think Tank to develop strategic litigation to pose a challenge to sentences of life without parole for inmates with dementia and other neurocognitive disorders. The clinic also developed materials to educate residents about city property

tax relief. The annual report noted that the gift from the Sterns also allowed it to hire an additional staff attorney.

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## Bezar teaches novel law class on child sexual abuse

**Nadeem Bezar** created a class at the Temple University Beasley School of Law titled “Child Abuse and Sex Trafficking of Minors,” a class believed to be the first of its kind in the country. Bezar, a Temple Law alumnus, noted the number of cases involving the sexual abuse of children has exploded in recent years. He has filed roughly 60 suits since joining the firm four years ago and he has raised awareness of the problem, with several other Kline & Specter attorneys working with him on these cases. Bezar, who is assisted in the class by **Amanda Lorentson**, explained why he decided to craft and teach a class on the subject: “After years of representing these young victims I thought it was important to educate the next generation of lawyers on how the child welfare system works and how they might represent victimized children so their voices can be heard in court and that they may obtain adequate civil remedies.” The class was originally capped at 18 students and later expanded because of demand. It involves information and Bezar’s experience dealing with the child welfare system and claims that can be brought on behalf of children who have been abused in the system in addition to addressing sex trafficking claims. In his career, Bezar has won scores of million-dollar-plus verdicts and settlements, many of them on behalf of sexual abuse victims. Among his verdicts was an \$11 million jury award against a child placement agency and the adoptive parents of a girl who was physically and sexually abused over several years. Also, in a highly publicized case, Bezar filed the first civil lawsuit under Pennsylvania’s 2014 human trafficking statute against a Philadelphia motel owner and operator on behalf of a teenage girl who was forced to have sex at the establishment. ([read the announcement](#))



Bezar

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## Becker, Laidacker among headliners for U.S. Supreme Court review

**Charles “Chip” Becker** was moderator and **Andra Laidacker** was a panelist for the Pennsylvania Bar Institute’s annual review of the recent term of the U.S. Supreme Court. The three-hour CLE was planned by Becker, head of Kline & Specter’s Appellate Department, along with **Judge Michael Fisher** of the U.S. Third Circuit Court of Appeals. The program’s first panel concentrated on criminal and immigration matters, such as the high court’s decision sustaining the DACA immigration program. The panel was comprised of Fisher, **Judge Juan Sanchez**, chief judge of the United States District Court for the Eastern District of Pennsylvania, and **Brett Sweitzer**, chief of appeals for the Eastern District’s Federal Community Defender’s Office. Panel 2 included **Prof. Jean Galbraith** of Penn Carey Law, Laidacker and **Andrew Sperl** of Duane Morris. They took up separation of powers issues, including cases concerning the enforcement of subpoenas against a sitting president. Laidacker discussed an important case concerning whether appointments to a Puerto Rico financial oversight board must be approved by the U.S. Senate. The nation’s highest court found that the Appointments Clause in that case gives the president latitude to make those appointments without Senate approval. Panel 3 was comprised of **Prof. David Cohen** of the Kline School of Law, **Prof. Stacy Hawkins** of Rutgers Law, and **Nancy Conrad** of White & Williams. They focused on civil rights and labor/employment issues, such as the case holding that the Civil Rights Act of 1964 applied to claims of discrimination based on homosexuality or transgender status.

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## Merson, Inscho lecture at sexual abuse litigation CLE



**Merson**

**Inscho**

**Jordan Merson** and **David Inscho** lectured for a nationwide CLE titled “Damages and Recovery in a Child Sex Abuse Case.” The event, hosted by Child USA, was held the month after New York Gov. **Andrew Cuomo** signed a measure extending the lookback window until Aug. 14, 2021 for victims of child sex abuse to file claims under the Child Victims Act. Merson, head of Kline & Specter’s New York office, who has won two of the largest sexual abuse verdicts in that state’s history, spoke on “Dealing

with the Family Case.” Merson won a \$28 million jury verdict against a Westchester County school district for inadequate supervision involving the sexual assault of a special education student. The verdict was believed to be the largest in a case involving physical and sexual assault in New York State history. He also has been actively involved in representing child sex abuse survivors in the Independent Reconciliation and Compensation Program (IRCP) administered by the Roman Catholic Archdiocese of New York. Inscho lectured on “Areas for Expert Reports.” Inscho worked with **Tom Kline** to obtain the largest-ever settlement against the Archdiocese of Philadelphia in a child sexual abuse case. The settlement, which was confidential, was for the family of a young man, now deceased, who was victimized as a child by a serial pedophile priest in Northeast Philadelphia. Inscho also won a \$4 million settlement for an autistic woman who was sexually assaulted while a resident at a Philadelphia-area treatment facility.

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## Specter, Lepisto, Baldwin contribute to MedMal handbook

**Shanin Specter** and **Braden Lepisto** co-authored the foreword for the Pennsylvania Association for Justice’s “MedMal for Beginners,” a 63-page handbook on handling medical malpractice litigation in the commonwealth. The handbook was designed as a primer containing fundamentals of the skills needed by young and seasoned lawyers alike in an ever-changing environment. They cited a Johns Hopkins University study that found that medical error is the third leading cause of death in the United States, behind only heart disease and cancer. They termed medical malpractice an “epidemic” but noted that relatively very few resulting injuries ever result in lawsuits – in fact, only about 1,500 each year in Pennsylvania, or fewer than one for every 9,000 residents. Specter and Lepisto wrote: “Our role is to advance not only the private interests of our clients, but also the public interest. Lawyers must be attuned to opportunities to make substantive suggestions for improved care to doctors and hospitals. When resolving cases, you should consider making policy changes or in-servicing of staff a

condition of settlement, so incidences of medical malpractice diminish.” **Kila Baldwin** contributed a chapter to the handbook dealing with “The Interplay Between the MedMal and Medical Product Case.” She wrote that in cases against a device manufacturer, it is virtually guaranteed that the device maker will seek to blame the health care provider, such as claiming the device was used or implanted improperly. Similarly, defendant health care providers will often try to blame a medical device manufacturer, often alleging a device was defective. In either case, experts must prepare reports that are exacting and do not deal with generalities, and all avenues must be meticulously examined. “In sum,” Baldwin wrote, “it is important in any case involving a medical device, either a malpractice or products liability action, that you consider all of the different potential causes of harm, and have experts





## Appointments:



**Kila Baldwin** was installed as president-elect of the 18,000 member Pennsylvania Association for Justice, formerly the Pennsylvania Trial Lawyers Association, a group founded in 1968 with a commitment to preserving civil justice and protecting individuals injured in the commonwealth. Baldwin previously served as PAJ vice president, parliamentarian, secretary and treasurer.

**Tracie Palmer** was named to two boards: the Board of Trustees of the Women’s Law Project, a public interest legal center established in 1974 to protect and expand the rights of women, girls and LGBTQ residents of Pennsylvania and beyond. Palmer also was confirmed as a member of the Board of Directors of the Public Interest Law Center, which seeks to advance the civil, social, and economic rights of Philadelphia-area communities facing discrimination, inequality, and poverty.



**Regan Safier** was named to the Pennsylvania Bar Association’s task force charged with developing recommendations to update processes and technology that will enable the legal system to continue operations under emergencies similar to the current COVID pandemic.

**Nadeem Bezar** was appointed to serve on Temple Law’s Board of Visitors, which is tasked with strengthening the school’s regional and national visibility. Bezar earned his law degree from the Temple University Beasley School of Law and is a Robert Conwell Society contributor to the law school. He is on the executive committee of the Temple Law Alumni Association and received the TLAA Diversity Leadership Award.



## Upcoming:

**Emily Marks**, along with Kline & Specter, on behalf of Children Matter is sponsoring a non-partisan fundraiser with political analyst Charlie Cook, host of the “Cook Report,” on October 21<sup>st</sup>, 5:30-7 p.m. via Zoom. Marks is a board member of Children Matter, which works to ensure that elected officials make the right investments of public resources so that children burdened by poverty and adversity have the best chance of reaching their full



potential.

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## Charity:

**Among donations made by Kline & Specter are those to aid the following:**

Share Food Program  
Make-A-Wish Foundation  
The Center for Autism  
American Cancer Society  
Children and Families First  
Doctors Without Borders  
Habitat for Humanity International  
Vision for Equality

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*“No one has ever become poor by giving.”*

— Anne Frank

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