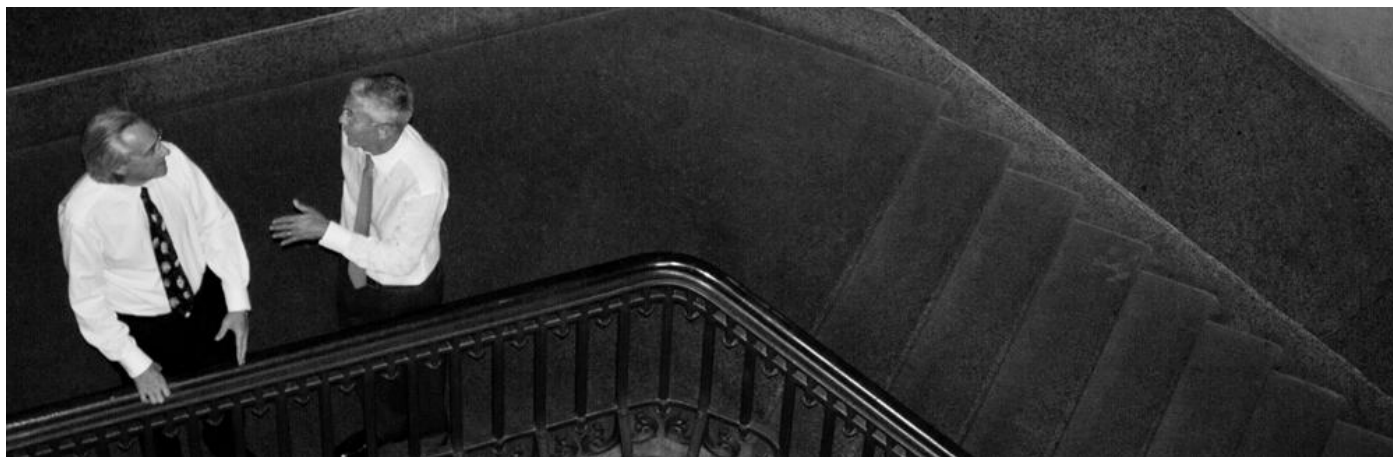


# KLINE & SPECTER PC



## Kline & Specter Eletter - July 2021

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Note: Kline & Specter employees returned to the office full-time on June 1.

## Settlements reached in NJ Transit Hoboken crash



Kline



Fitzgerald

**Tom Kline** and **Patrick Fitzgerald** achieved settlements totaling more than \$8.15 million on behalf of four victims and the family of one decedent involved in the 2016 crash in which a NJ Transit train rammed through a barrier at Hoboken Terminal, killing one person and injuring 108 others. The clients were also represented by co-counsel Bob Mongeluzzi, Drew Duffy and Michael Budner of Saltz Mongeluzzi & Bendesky. Included among the victims for whom settlements were reached was the family of Fabiola deKroon, a

34-year-old attorney who was killed by falling debris from a station canopy that collapsed. She had been walking through the terminal after dropping her daughter off at school. Another victim, a passenger on the train, suffered orbital fractures as well as a concussion. Another passenger lost

a finger in the crash and also suffered a concussion, facial cuts and a shoulder injury when his train car caved in. “The settlements come after five hard-fought years of litigation. Our clients look forward to moving forward in their lives as best they can from the damage caused by NJ Transit,” Kline and Mongeluzzi said in a joint statement to the news media. The crash occurred as the train sped up instead of decelerating while approaching the station. NJ Transit had a lack of technology that could have automatically slowed or stopped the train. NJ Transit has since installed the technology, known as Positive Train Control. Kline and Mongeluzzi further commented about their clients: “They remain hopeful that NJ Transit will undertake and continue to undertake the necessary safety measures and precautions to ensure a tragedy like the fatal train crash at Hoboken never happens again.”



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## Baldwin, Polin win verdict in cancer case

**Kila Baldwin** and **Mark Polin** won a \$1.335 million verdict in federal court for a Maryland woman against a doctor who failed to diagnose her ovarian cancer in 2016, a case in which a timely diagnosis would likely — with a 95 percent survival rate — have saved her life. Now, Chasidy Plunkard, 46, is not expected to live past this year. The story began in January 2016 when Plunkard, complaining of pelvic pain, underwent an ultrasound that revealed an abnormal right ovary containing a cyst. Later that month a doctor, Charles Marks, with WellSpan OB/GYN, performed an endometrial biopsy and advised his patient that the result was benign, that nothing more need be done and she had no cause for concern. But Plunkard’s pain persisted until, more than a year later, she underwent a laparoscopic cholecystectomy for what was thought to be gallstones. But instead of gallstones, that procedure revealed the presence of cancer, with a final pathology diagnosing it as Stage IVB cancer of the ovaries, a condition generally considered incurable. Despite six courses of chemotherapy, Plunkard’s prognosis remains poor with advanced stage ovarian cancer. Said Baldwin after the verdict: “I’m glad the jury recognized the negligence here and thrilled that Ms. Plunkard was there to see it happen.” The verdict is the fourth seven-figure verdict by Kline & Specter attorneys during the pandemic.



Baldwin



Polin

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## Safier obtains settlement in VA hospital case

**Regan Safier** reached a \$2.75 million settlement for a 53-year-old military veteran who suffered partial amputation of his left leg because of a medical error by a podiatrist who operated on his foot and ankle at the Pittsburgh Veterans Administration Medical Center. Darwin Gurto, of Pierpont, Ohio, near the Pennsylvania border, underwent the operation to relieve foot and ankle pain and was told he needed surgery. But in the months after the operation, he still had pain to the



Safier

point at which he had trouble walking or even standing. Gurto's surgeon assured him the operation had gone well and he was healing. But a second physician, an outside orthopedic surgeon, recognized the presence of non-union fusion and that Gurto's foot and ankle were improperly fused with excessive plantar flexion, meaning his toes were pointing downward so badly that he could not place his heel on the ground. Several successive surgeries to try to fix the problem were unsuccessful because of the improper fusion and the delay in recognizing the problem. Gurto was left with worse pain and deformity. In April 2019, more than four years after the initial surgery, his leg was amputated below the knee. Safier filed suit against the United States in the U.S. Western District of Pennsylvania under the Federal Torts

Claims Act. She told the news media: "This was an excellent result for our client, especially since the funds were paid entirely in cash without a reversionary trust which the federal government often insists on when settling FTCA cases."

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## Becker successfully defends \$70M Risperdal verdict

**Charles "Chip" Becker**, head of the firm's Appellate Department, successfully defended a \$70 million verdict awarded against Johnson & Johnson for its failure to warn about the risks associated with the off-label use of the anti-psychotic drug Risperdal. The final chapter in the case came with the U.S. Supreme Court's refusal to hear J&J's bid to overturn the verdict. The protracted legal matter meant that the pharmaceutical giant paid more than \$99 million once delay damages and interest were added to the verdict. The verdict had been previously upheld by the Superior Court of Pennsylvania in 2019. The case dates back to 2003, when Andrew Yount, of Tennessee, was prescribed the drug when he was four years old. A year later he developed gynecomastia, or an enlargement of his breast tissue. In the first legal case, a Philadelphia jury in 2016 determined that J&J not only failed to warn Yount's doctors about the risk of gynecomastia, but that the company also falsified, destroyed or concealed evidence in the case. Risperdal was approved in 1993 by the U.S. Food and Drug Administration to treat adults suffering with schizophrenia and bipolar mania in adults but J&J marketed the drug to children off-label. J&J and subsidiary Janssen Pharmaceuticals have faced thousands of Risperdal-related lawsuits, with many still pending. In 2019, Tom Kline and Chris Gomez along with Jason Itkin and Roland Christensen of Arnold & Itkin LLP obtained an \$8 billion jury verdict in a Risperdal case. That verdict is the subject of an ongoing appeal. Stephen Sheller of Sheller, PC, is co-counsel and a pioneer in the Risperdal litigation.



Becker

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## Sixteen named by Super Lawyers, Kline extends record as No. 1

Sixteen Kline & Specter lawyers were named as 2021 Pennsylvania Super Lawyers or Rising Stars, with **Tom Kline** selected as the state's No. 1 attorney a nationally unprecedented 18 straight years and **Shanin Specter** selected for the 18th year among the state's Top 10. Super





Lawyers includes the best 5 percent or less of all lawyers in a state. Other Kline & Specter lawyers selected by Pennsylvania Super Lawyers 2021 are **Lee Balefsky**, head of the firm's Mass Tort Department and also an 18-year selection, **Charles "Chip" Becker**, head of the firm's

Appellate Department, who was again named in Super Lawyers Top 100 Philadelphia list, **Michael Trunk**, who was named for the 10th year, **Dominic Guerrini**, **Nadeem Bezar**, **Christopher Gomez**, and **Kila Baldwin**. For Kline, becoming Pennsylvania Super Lawyers' Top Point Getter for the 18th straight year was a first for any lawyer in any state. He has been recognized over the years for a litany of major legal victories, including his \$8 billion punitive damages verdict in 2019 against Johnson & Johnson in a Risperdal case. Super Lawyers is an independent service that uses votes from attorneys across the state as well as a blue-ribbon panel to rate outstanding lawyers from more than 70 practice areas who "have attained a high degree of peer recognition and professional achievement." Kline & Specter attorneys also were named as Pennsylvania Rising Stars for 2021, designating them as among the top 2.5 percent of attorneys in the state who are 40 or younger or practicing 10 years or less. They are **Patrick Fitzgerald**, **Priscilla Jimenez**, **Braden Lepisto**, **Emily Marks**, **Tracie Palmer**, **Ben Present** and **Elia Robertson**. Additionally, **Jordan Merson**, who heads the firm's New York City office, has been named a New York Super Lawyer and **Gilbert Shelsby** and **Robert Leoni**, of the firm's Delaware office, have been named Super Lawyers in that state.

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## Kline & Specter takes top NE settlement of 2020

Kline & Specter had the No. 1 settlement in the northeastern United States in 2020, a \$12.75 million accord reached with a medical device maker, according to *The Legal Intelligencer*. The settlement with Monteris Medical Inc. was reached in litigation involving its NeuroBlate surgical device used for intracranial surgery. In this case, the tip of the device broke off during surgery, releasing pressurized carbon dioxide into the brain of the patient, Michael Brassloff, who had undergone surgery to remove a benign brain tumor. Used for the procedure was the NeuroBlate 2.2 mm SideFire, a laser probe cooled by carbon dioxide. Brassloff lapsed into a coma and, when he later regained consciousness, he had trouble walking and talking and had developed seizures and symptoms similar to Parkinson's disease. The incident was reported by Monteris to the U.S. Food and Drug Administration and the device was taken off the market. The case was litigated for Kline & Specter by **Shanin Specter**, **Kila Baldwin**, **Gary Zakeosian** and **Philip Pasquarello**.

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## Specter, Bosworth, Dunbar file 16 suits over hazardous emissions

In a single day, **Shanin Specter**, **Tom Bosworth** and **Aaron Dunbar** filed 16 lawsuits on behalf of people stricken with cancer, some fatally, believed caused by the emission of ethylene oxide (EtO) from the B. Braun plant in Hanover Township, Pa. The colorless gas has been linked to breast cancer, leukemia, Non-Hodgkin lymphoma and other cancers and has been classified as a human carcinogen by the U.S. Environmental Protection Agency. EtO is used to sterilize medical equipment at the B. Braun plant. Plaintiffs in the suits against B. Braun, based in Germany, are



Specter



Bosworth



Dunbar

people who lived, worked or spent significant time near the plant. Three have died due to cancer, seven are suffering with breast cancer and others have brain cancer, types of blood cancer and urogynecologic cancer. Beyond negligence

and strict liability, the lawsuits claim fraud and misrepresentation, and seek punitive as well as compensatory damages. After filing the lawsuits, Specter told the news media: "This plant is deadly. Its dangerous emissions need to be curtailed now and the wrongful harms must be compensated and punished quickly and fairly." In addition to the suits, the firm also filed a complaint with the EPA and also requested that the Pennsylvania Department of Environmental Protection investigate the matter and order remediation. Specter noted that there are alternatives to sterilizing medical devices other than using ethylene oxide and, even if EtO is used, there are controls and devices that can greatly reduce emissions. According to news reports, B. Braun is the largest EtO polluter in Pennsylvania and has at times been the nation's 12th largest EtO polluter.



## Specter discusses B. Braun case on Court Radio

After the B. Braun lawsuits were filed, **Shanin Specter** spoke at length about the cases on Court Radio hosted by attorney Dean Weitzman. "For many years they were emitting an enormous amount of ethylene oxide from this plant," he said, noting that those who worked there or lived within a five-mile radius had an increased chance of contracting cancer. Specter blamed not only the company but also toothless government agencies for allowing such problems to occur and persist. "One of the problems we have is the government regulators are very weak. We can't count on the EPA or FDA ... to police that and the truth of the matter is the civil justice system is the best check on the free enterprise system." Companies generally operate under a profit motive, often placing money ahead of the safety of people. And while lawyers are often the target of criticism, Specter told Weitzman: "It is lawyers such as you and me that provide for safety by investigating harms and, where appropriate, bringing lawsuits and compensating folks who have been injured and punishing those who have acted outrageously. And that has created an appropriate level of deterrence in a lot cases, but not all cases."



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## NJ acts on Piazza Anti-Hazing Act

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SENATE, Nos. 84 and 2093

STATE OF NEW JERSEY  
219th LEGISLATURE

It was some time in the making, but the New Jersey legislature has finally passed a sweeping anti-hazing measure. Legislative delays and COVID-19 set the measure back but both the Assembly and the Senate passed the legislation in rapid fashion in May and June, respectively, with the Senate voting 38-0. Gov. Phil Murphy is expected to sign the bill into law. The legislation is known as

the Timothy Piazza Anti-Hazing Act, named for the Penn State student who died in a fraternity hazing incident. It increases penalties for those found guilty of acts of hazing, including classifying hazing that results in serious bodily harm as a felony. Also under the measure, any student, fraternity or sorority, organization or higher education institution that “knowingly or recklessly promotes or facilitates a person to commit an act of hazing or aggravated hazing” would be subject to fines ranging from \$5,000 to \$15,000 and possible forfeiture of proceeds or property connected to the hazing activity. The legislation defines hazing, in part, as forcing someone to consume drugs or alcohol that subjects them to emotional or physical harm. It also provides protections for those who try to help hazing victims. In the Piazza case, almost 12 hours passed before anyone called for help. The legislation has been championed by Timothy’s parents, Jim and Evelyn Piazza, as well as the attorneys representing them, **Tom Kline** and **David Williams**. Pennsylvania enacted the first Piazza Anti-Hazing Act in 2019. “We are gratified,” said Kline, “to see New Jersey adopt the statutory language of the Pennsylvania Timothy J. Piazza anti-hazing statue. This is the result of the continuing and tireless advocacy of Jim and Evelyn Piazza and their efforts to eradicate the scourge of fraternity hazing on America’s college campuses.” Other states, including Indiana, North Carolina and Washington are also considering similar laws.

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## Marks part of push that got Youth Ombudsperson Office

**Emily Marks**, a board member of Children Matter, for years was part of a group petitioning City Council to pass a measure creating the Philadelphia Youth Ombudsperson Office. Recently, that effort came to fruition as council approved the office along with \$500,000 in initial funding. The ombudsperson office is designed to create an independent agency for the reporting of mistreatment of minors at residential facilities and ensures those reports will be thoroughly investigated. The office is intended to help protect children who are forced to live in institutions by giving them a place where they can safely report when they feel they are in harm’s way. Said Marks: “For far too long, through numerous scandals of children being harmed at residential facilities, there has been a need for a local, independent ombudsperson office to hear grievances from children who are placed in care and to investigate reports of child abuse. The office has the authority to report to the mayor and city council on systemic problems at facilities that were disregarded for years and will help to prevent harm to the City’s most vulnerable youth.” Marks’ focus at Kline & Specter is on pursuing justice for children who have suffered



Marks



sexual abuse and other injuries while in foster care, institutional and educational settings. She was co-counsel in a trial that resulted in a \$4.5 million jury verdict against the Defender Association of Philadelphia, a foster care agency and the foster parents of young twins who were abused after being placed in a home in Lancaster, Pa. In another case, Marks was co-counsel in a trial that resulted in an \$11 million verdict against a child placement agency and the adoptive parents of a young girl who over several years was physically and sexually abused in the home.

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## Current popularity of Big Pharma won't have big effect on verdicts, says Kline



Kline

The efforts and success of pharmaceutical companies in battling COVID-19 – particularly the quick action in creating effective vaccines – have improved public attitudes toward Big Pharma. The Harris Poll, for one, reported that 62 percent of Americans give the industry a positive rating, a dramatic increase from 32 percent a year earlier. Some observers feel this may result in more defense verdicts in cases against drug companies. But in a front-page article in *The Legal Intelligencer*, **Tom Kline** disagreed. For one, he noted the government's pause of the Johnson & Johnson vaccine after some users experienced blood clots “neutralized any glow that Big Pharma might have gained in public perception.” He also noted that prospective jurors are generally questioned about their view of drug companies in voir dire and those

with strong opinions are usually excused. “The great in-between will remain and won't be bowled over by the fact that three pharmaceutical companies have created vaccines that were approved by the FDA, only two of which are held in high regard,” he said.

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## Bezar pens articles on Uber liability, sex abuse bill

There has been much debate over whether Uber and Lyft drivers are employees of the firms or independent contractors and what liability the companies bear. **Nadeem Bezar**, in an article titled [The Road to Redemption](#), opines that rideshare companies are responsible, including when their drivers facilitate tortious and even criminal acts against children. Bezar, who has filed suit against Lyft, Inc. for transporting an unaccompanied minor to a Philadelphia motel where she was assaulted and raped, says it is necessary to “scrap the proposition that Lyft and Uber have no duty to passengers whatsoever.” In his article published in the Pennsylvania Association for Justice Spring 2021 Quarterly Bezar says that Uber, for instance, represents to riders that its drivers go through rigorous screening procedures and that they continue to be monitored. He says the rideshare companies should be

held to the same responsibility as the drivers of taxis, buses or trains. In a second article, this one in PAJ's Summer 2021 Quarterly, Bezar bemoaned the inability of Pennsylvania government to get a referendum on the May ballot to create an amendment extending the litigation window for victims of child sexual abuse to sue their abusers. The measure would have granted a two-year reprieve for abuse victims, many of them very young when they were abused, from time limits in state law under which they



Bezar



could sue individuals or institutions responsible for their abuse. “... When politics gets in the way of victims’ rights, it only further delays their due justice in the courts,” he said. The constitutional amendment required to change current law now cannot be placed on the ballot until 2023.

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## Charity



Asian Mosaic Fund

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**“Where charity keeps pace with gain, industry is blessed.”**

**—William Penn**

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