

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, TUESDAY, AUGUST 29, 2017

An **ALM** Publication

Train Crash Attorneys Express Need for Speed in Litigation

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Shortly after midnight on the morning of Aug. 22, a SEPTA regional train crashed into an empty rail car at a transportation center in Upper Darby.

Less than 40 hours later one of the passengers had a lawsuit docketed with the Philadelphia Court of Common Pleas.

According to the attorneys representing that plaintiff, filing a lawsuit quickly is one of the most important strategic decisions when dealing with potentially large matters in litigation, and a move that allows the plaintiffs attorneys to take the reins of the litigation early.

A lawsuit filed by attorneys **Thomas R. Kline and Patrick Fitzgerald of Kline & Specter** and Robert Mongeluzzi of Saltz Mongeluzzi Barrett & Bendesky was on the docket in the middle of the afternoon of Aug. 23, at about 3 p.m. The cause of action against SEPTA—the Southeastern Pennsylvania Transportation Authority—was filed on behalf of plaintiff Derrell Robbison.

Filing so soon after the crash mirrored the strategy the two firms pursued in other recent train-

related litigations, including a suit filed in July over a New Jersey Transit crash, a suit filed soon after a 2016 train derailment in Chester killed two Amtrak workers and left dozens of passengers injured, and the 2015 Amtrak derailment that injured more than 200 people and left eight dead.

Lawsuits over the 2015 derailment were first filed about a week after the derailment. Less than 18 months later, Amtrak agreed to settle 125 claims for \$265 million.

According to Kline and Mongeluzzi, filing a lawsuit quickly is important for any litigation that comes out of a large-scale incident. It gives the lawyers direct control over venue, and potentially attracts other plaintiffs to the firm, which can put the lawyers in a better position to lead the litigation if numerous other suits are filed.

But most importantly, according to the attorneys, filing early gives the plaintiffs access to on-the-scene evidence, and has the potential to alert those with possibly significant evidence to come forward early.

Mongeluzzi gave the example of the Salvation Army building collapse case, which was filed a day after a Center City Philadelphia building being demolished collapsed onto the occupied facility

leaving seven dead and injuring 12. He said a day after that lawsuit was filed, Philadelphia officials announced they planned to remove the debris from the site.

"We went in and got a protective order to halt that so experts could go out and see the site," Mongeluzzi said, adding that having experts "actually put their hands on the evidence before it was removed, relocated or destroyed" was an important factor both in discovery and at trial.

Kline said his and Mongeluzzi's firm have been following this template since the litigation over the collapse of Philadelphia Pier 34 in 2000. Filing that suit quickly allowed the attorneys to access the site on a boat, while an expert in scuba gear examined the wreckage from the water.

"We learned the value of getting immediate access to the site," Kline said.

The lawsuit the firms filed last week stems from a crash that occurred at the 69th Street Transportation Center. According to media reports at least 33 people were injured, one of which was 26-year-old Robbison, who allegedly suffered a concussion.

Robbison's complaint alleged the train, which had been carrying 41

people, had been traveling at an excessive speed as it came into the station. The suit lodges one count of negligence against SEPTA.

At a press conference held the day the lawsuit was filed, Kline and Mongeluzzi said the train should have been equipped with "positive train control," which is a system that allows for trains to be monitored and controlled in an effort to avoid crashes and derailments.

According to the attorneys, holding the press conference not only raised awareness about the need for transportation safety, it can also help advance the plaintiffs' investigative and discovery efforts.

According to Mongeluzzi, one of the most significant pieces of evidence in the Salvation Army building collapse case—a photo of the adjacent building taken from above as it was being demolished—was turned over to attorneys handling the civil suit before police and prosecutors were aware of it. Surveillance video of the 2015 Amtrak train derailment taken from a nearby facility was turned over to the firm soon after they filed suits in that case, Kline said.

"It's a collateral benefit of public awareness in the age of social media," Mongeluzzi said.

According to the docket, SEPTA has not retained counsel in the Robbison case. A spokeswoman for SEPTA did not return a call for comment Monday.