

Attorneys involved offer insights into \$265M Amtrak derailment settlement

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The plaintiffs' lawyers representing victims of the deadly May 12, 2015, Amtrak derailment in Philadelphia had more challenges than simply bringing the passenger-railroad service to the bargaining table or arriving at a suitable settlement.

There was the sprawling nature of the litigation itself – 64 separate lawsuits in six federal court jurisdictions – as well as jockeying among the victims' lawyers themselves for control of the case.

It all was resolved quickly when Amtrak agreed in October to one of the largest rail-crash settlements in U.S. history. Beforehand, lawyers who managed the plaintiffs' case agreed to forgo customary surcharges. The end result was a \$265 million settlement that came in unusually quickly for a case of its magnitude.

On Tuesday, several plaintiffs' lawyers who were deeply involved in those negotiations discussed the nuances and fine points of the settlement during a 90-minute panel discussion at the Thomas R. Kline School of Law at Drexel University,

a session offered as a continuing legal-education course.

Thomas Kline, for whom the law school is named, said a major hurdle was avoiding conflict among the victims' lawyers.

"How do we fairly compensate the most people without plaintiffs lawyers becoming adversaries?" was how Kline, of the firm of Kline & Specter P.C., described a threshold issue.

Lawyers who sit on the management committees for high-stakes litigation typically earn more than others in the case, and that can generate jockeying and mistrust. The key to alleviating skepticism among out-of-town lawyers was fashioning a settlement that was speedy, called for no special fees for management-committee members, and maximized payouts to the victims.

"They didn't want to feel as if this was an inside Philly job," attorney Fredric Eisenberg, of the firm Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck P.C., said of out-of-town lawyers who were not on the committee.

On Oct. 27, U.S. District Judge Legrome Davis signed off on the

payout by Amtrak resulting from the derailment of Train 188 in Philadelphia, which claimed eight lives and injured more than 200 people.

The northbound train derailed on the Frankford Junction curve in the Port Richmond section of the city shortly after it left 30th Street Station. That section of the track had a posted speed limit of 50 miles per hour, but the train was traveling at more than twice as fast – 106 mph – as it entered the curve.

The National Transportation Safety Board later determined that the engineer, Brandon Bostian, had lost track of where he was, likely because he became distracted by radio reports of a nearby SEPTA train being struck by rocks.

On Tuesday, Kline offered a more pointed explanation, saying Bostian became alarmed by a report from a nearby SEPTA engineer that an object had broken his windshield. An object apparently also had struck Train 188, Kline said, although the NTSB never cited an object's striking the train as a cause of the accident.

“I think it [the derailment] is because he wanted to get the hell out of the there,” Kline said.

Early on, Amtrak acknowledged liability for the crash, which simplified matters.

“Amtrak did admit liability, so from Amtrak’s perspective this was an exercise in determining damages,” said Chip Becker, an appellate lawyer who practices at Kline & Specter.

Under the settlement, two court-appointed masters will determine damages in hearings at which the victims have the opportunity to present evidence of their losses, without challenges from Amtrak.

“The entire process is non-adversarial,” said attorney Todd Schoenhaus, of the firm Eisenberg, Rothweiler.