

Elevator Mishap Yields \$750K Award

The Legal Intelligencer

Actual Damages \$1.25M

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On Thursday, a jury of five men and three women deliberated just three hours before returning a \$750,000 negligence verdict against the maker and custodian of a service elevator car in the Hotel Atop the Bellevue that fell suddenly from the 19th floor with a young housekeeping worker aboard.

Atwood was rushed to Thomas Jefferson University Hospital, where he was immediately placed in halo-traction to immobilize his neck and spine, and subsequently underwent surgery to fuse ligaments along his upper vertebrae.

Arguing before Philadelphia Common Pleas Court Judge Frederica Massiah-Jackson, Atwood's lawyer, [Thomas Kline](#) of Kline & Specter, noted that this was not the first incident involving the car in question.

In 1989, another passenger, Dawn Cooper, sustained severe spinal injury at the L5/S1 spinal region in a similar incident. Thus, Kline alleged that the negligently installed and maintained elevator was not fixed properly before Atwood's mishap.

Massiah-Jackson allowed three Bellevue employees, two former and one present, to testify at trial that they had witnessed the elevator malfunction similarly on previous occasions. "I'm really pleased with the situation," said Atwood in response to the jury verdict, which is only a fraction of the \$1.25 million, after adding two pre-trial settlements and delay damages into the equation.

Kline, of the partnership of Kline & Specter, is one half of this summer's dynamic legal duo, the other half being Shanin Specter, who recently won one of the largest jury verdicts in Pennsylvania history, a \$24 million award last month in a pool negligence case. Both were formerly associated with Beasley Casey Colleran Erbstein Thistle & Kline.

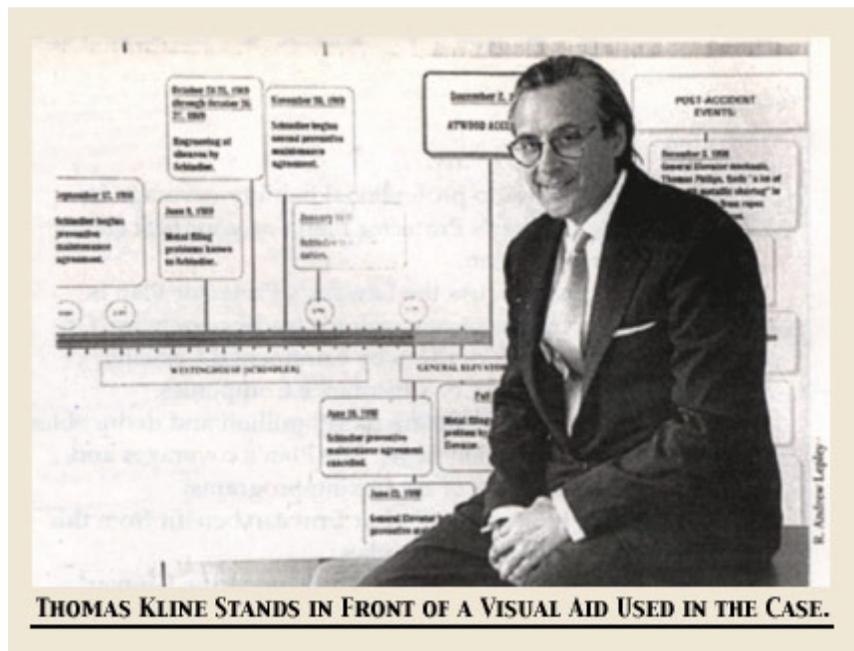


Kline: Plaintiff's Attorney

The Bellevue is owned by a management partnership that grew under the name of Richard I. Rubin & Co. Inc. The elevators were manufactured by Westinghouse Elevator, later to be taken over by Schindler Elevator Corp. during the modernization process underway before Bellevue's grand re-opening in 1989.

Consistent with Westinghouse records, the elevators were equipped with the wrong hoist cables, the friction from which created excessive metal shavings.

In 1990, the defective ropes were replaced. At that time, Westinghouse-Schindler had a preventative maintenance agreement with Rubin, that was modified by novation, where Schindler was replaced by General Elevator Co. as a full-time maintenance contractor from June 1990, through the time of the accident.



Court papers revealed that, prior to and after the time of the accident, the mechanic on-duty found metal filings on the computer terminal, the elevator's controls. The plaintiff's expert, Herman Krussman, a long-time former Otis Elevator employee, testified that the metal filings caused the short in the computer board, leading the elevator to an abrupt stop.

Evidence of subsequent repair came in because the defendants attempted to show a videotape of the working condition of the elevator in 1994. From that, it was determined by General Elevator through cable experts that cables used by Schindler were the "wrong application."

The breakdown of the pre-trial joint torfeasor settlement with Richard I. Rubins & Co. Inc., Bellevue Associates and General Elevator, was \$600,000. That amount, added to the jury verdict of \$525,000, 70 percent of \$750,000 award - apportioned 70 percent against Schindler Corp., the only party that did not settle - and 30 percent against General Elevator Corp., which settled pre-trial, with delay damages of \$125,962 bringing the total damages to \$1.25 million.

"We argued to the jury that the defendant showed a videotape which had a normal emergency stop where, if someone pulled the switch, a glass of water would not spill," Kline explained.

"In my closing, I argued to the jury what really happened with my own demonstration. I smashed a glass inside a linen towel and I told the jury that this is what happened; these were the same pieces as that of Atwood's shattered spine. I then took the napkin, handed it back to my

client and told him he could now go back to folding them for a living," said Kline, sarcastically referring to the defendants' statement that Atwood could still perform his pre-accident duties.

Defense counsel for Schindler, Kevin J. Connors, of Marshall Dennehey Warner Coleman and Goggin, would not return phone calls yesterday while Joseph Erwin of Thomson and Pennell, counsel for General Elevator, would not comment on the case. Gary S. Turetsky, with Bennett Bricklin & Saltzburg, represented Rubin, the Bellevue's owner.

"We settled in the first week of trial, while the jury found Schindler 70 percent liable, General Elevator 30 percent liable and Rubin nothing," Turetsky said.

There is no word yet on whether an appeal is expected.

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