

Chicago Daily Law Bulletin®

Volume 159, No. 244

Jury awards \$4.1M to injured CTA worker

Plaintiff found to be 45 percent at fault, cutting verdict from \$7.5 million

BY JOHN FLYNN ROONEY
Law Bulletin staff writer

A Cook County jury has awarded about \$4.1 million to a man who was severely injured after falling 20 feet through a hole at a Chicago Transit Authority construction site on the Brown Line.

The award would have been higher — about \$7.5 million — but jurors found the plaintiff, James Glenn, nearly half at fault for the accident.

Glenn was working as a flagger for the CTA at its Southport Avenue station on a walkway at track level on Feb. 15, 2008. Glenn's job was to stop the trains so that construction workers could get off the elevated tracks.

Glenn slipped on a patch of ice and then fell through the hole and landed on the sidewalk, said Ronald Kalish, who represented him at trial along with Bruce D. Goodman, both of Steinberg, Goodman & Kalish.

Glenn suffered a crushed pelvis, broken back and other injuries.

He also ruptured his intestines, needed emergency surgery and was hospitalized for seven weeks at Advocate Illinois Masonic Medical Center in Chicago.

Due to his injuries, Glenn has not worked since the accident, Kalish said.

FHP Tectonics Corp. was the general contractor for the Brown Line project. Garth Construction Services Corp. was the subcontractor. They were named as

defendants in the lawsuit.

Glenn's attorneys asserted that the defendants failed to provide a safe construction site. They also argued that the defendants violated an Occupational Safety & Health Administration regulation that any construction employees working at a height above 6 feet must be protected from falling through holes.

The plaintiff lawyers further contended that the defendants' construction contract with the CTA required them to provide a safe workplace.

Glenn's lawyers asked the jury for an award of about \$20 million in damages.

Lawyers for the defendants argued that Glenn was completely at fault in the accident and that the hole was an open and obvious danger.

Before the trial, the plaintiff lawyers voluntarily dismissed six other defendants named in the case, including the CTA.

The jury awarded the verdict on Dec. 6, following a 10-day trial before Cook County Associate Judge Elizabeth M. Budzinski. The case is *James Glenn v. FHP Tectonics Corp., Garth Construction Services Corp.*, No. 08 L 5448.

After factoring in Glenn's contributory negligence of 45 percent on the more than \$7.5 million award, the figure was reduced to roughly \$4.1 million.

The jury found FHP Tectonics Corp. 30 percent at fault and Garth Construction Services 25 percent responsible for the accident.

Kalish said he expected the jury to attribute some negligence to Glenn, but that the 45 percent figure was high. Glenn had an expectation that the hole he fell through would be covered, Kalish said.

"This verdict will remind



Ronald Kalish

construction companies that they not only have to provide a safe place for these workers," Kalish said, "but having an opening above a residential street poses a risk to drivers and pedestrians below who could have just as easily been injured from a tool or object falling through this opening."

Glenn, 44, is the father of two children, 14 and 21, who live with him in Hazel Crest and help care for him, Kalish said.

The verdict "gives (Glenn) some comfort knowing that he won't be a burden on his children" because he will be able to pay for care, Kalish said.

The defendants offered \$3 million to settle the case after the jurors informed the judge that they had reached a verdict but before it was announced, Kalish said. Glenn turned down the offer.

Daniel A. Cummings III and Robin K. Powers — both partners at Rothschild, Barry & Myers LLP — represented the defendants at trial. Neither Cummings nor Powers could not be reached for comment.