

Missouri Lawyers WEEKLY

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Jury favors worker in train derailment

BNSF admitted negligence, disputed employee's injuries



Rick Holtsclaw



Brad Kendall

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A Kansas City law firm won a \$1.25 million verdict in Iowa state court for a BNSF Railway Co. worker injured in a low-speed train derailment.

On Oct. 9, 2009, John Giza, of Creston, Iowa, was the conductor of a train crew assigned to pick up rail cars near Red Oak, Iowa. He was riding on a ladder on the side of a rail car that derailed at an uneven spot in the track, throwing him from the car. Although the car was only moving a few miles an hour, Giza injured his left knee when he landed.

Shortly before trial, BNSF

admitted in court documents that the railway's negligence had caused the accident. The company, however, challenged the nature and extent of Giza's injuries and argued that he could have continued to work in a less physical job.

But Giza's attorney, Bradford Kendall, said his side's vocational expert testified that Giza, who was 59 at the time of the accident, would not be able to work again.

The man brought the lawsuit in Polk County, Iowa, District Court under the Federal Employers Liability Act. An eight-member jury returned a unanimous verdict in Giza's favor on June 29 after 90 minutes

of deliberation.

The verdict is the third large verdict that Kansas City-based Holtsclaw & Kendall has secured against BNSF in the last two years. In May 2011, an Andrew County jury returned a \$4 million verdict against the railway in a lawsuit over the death of a 10-year-old girl. Last October, a Jackson County jury awarded \$3.5 million to a maintenance worker who hurt his back after escaping seconds before a train collided with his dump truck.

BNSF's attorneys, Michael W. Thrall and Angel A. West, of Nyemaster Goode in Des Moines, Iowa, didn't respond to an email seeking comment by deadline. **MO**

\$1.25 million verdict

OUT-OF-STATE

FEDERAL EMPLOYERS LIABILITY ACT

■ **Venue:** Polk County (Iowa) District Court

■ **Case Number/Date:** LACL 120622/June 29, 2012

■ **Judge:** Mary Pat Gunderson

■ **Plaintiff's Experts:** Terry Cordray, Overland Park, Kan. (vocational rehabilitation); John Ward, Prairie Village, Kan. (economics)

■ **Last Pretrial Demand:** \$400,000

■ **Last Pretrial Offer:** \$240,000

■ **Caption:** John Giza v. BNSF Railway Co.

■ **Plaintiff's Attorneys:** Rick Holtsclaw and Bradford Kendall, Holtsclaw & Kendall, Kansas City; George F. Davison Jr., Law Offices of George F. Davison Jr., Des Moines, Iowa

■ **Defendant's Attorneys:** Michael W. Thrall and Angel A. West, Nyemaster Goode, Des Moines, Iowa