

Missouri Lawyers WEEKLY

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Injured worker wins case on train accident

Plaintiff claims he can't find work now



Rick Holtsclaw



Bradford Kendall

when trains would pass through the area. The flagman erroneously sent a train onto the track where the Razorback employees were working.

Lago's dump truck was sitting on the rails of the track. He jumped out of the truck before the collision, but his hasty exit left him with back pain.

"It's not clear when the herniation occurred, whether it was from jumping from that height and landing on the hard rocks or from running and then falling. But somehow in that sequence of events he sustained this back injury," said one of Lago's attorneys, Brad Kendall, of Holtsclaw & Kendall in Kansas City. "But if he hadn't gotten out of the truck, he would have been dead. The train demolished the dump truck."

Lago was taken by ambulance to

the hospital. Several days later, he was referred to a pain management specialist and given epidural steroid injections. He was eventually referred to a surgeon, who performed a lumbar fusion. He was placed on a permanent 25- to 30-pound lifting restriction.

The lawsuit, filed in 2010, originally named the Kansas City Terminal Railway, which owned the tracks, and Union Pacific, which owned the train. Those parties were dropped from the case before trial.

BNSF admitted negligence shortly before trial, but the company disputed causation as well as the nature, extent and severity of Lago's injury and damages. The railway company argued Lago had a pre-existing degenerative disk disease.

BNSF's defense attorney, R.B. Miller III, of Lathrop & Gage in

Kansas City, said he also argued that Lago's earnings history was "about zero," as he'd been self-employed for about 20 years and had only worked for Razorback for about five months prior to the accident.

Miller said he suggested the jury ought to award about \$500,000. He said the company intends to file post-trial motions.

The plaintiff's evidence at trial was that Lago is not employable in the labor market due to his injuries. The jury award included \$1,075,594 in lost income, household services and future medical costs.

The case marks the second multi-million-dollar verdict that Holtsclaw & Kendall has secured against BNSF this year. In May, an Andrew County jury returned a \$4 million verdict against the railway in a lawsuit over the death of a 10-year-old girl.

— Scott Lauck

■ \$3.5 million verdict

NEGLIGENCE, PERSONAL INJURY

■ **Venue:** Jackson County Circuit Court

■ **Case Number/Date:** 1016-CV26616/Oct. 21, 2011

■ **Judge:** Brent Powell

■ **Plaintiff's Experts:** Mike Dreiling, Prairie Village, Kan. (vocational); John Ward, Prairie Village, Kan. (economics); Dr. Terrence Pratt, Lee's Summit (physical medicine, rehabilitation)

■ **Defendant's Expert:** Dr. Chris Fevury, Lawrence, Kan. (internal medicine)

■ **Special Damages:** \$1.1 million in lost income, household services and future medical costs

■ **Last Pretrial Demand:** \$1.5 million

■ **Last Pretrial Offer:** \$550,000

■ **Caption:** Vincent Lago v. BNSF Railway Co.

■ **Plaintiff's Attorneys:** Rick Holtsclaw and Bradford Kendall, Holtsclaw & Kendall, Kansas City

■ **Defendant's Attorneys:** R.B. Miller III and Paul Day, Lathrop & Gage, Kansas City

A Jackson County jury awarded \$3.5 million to a maintenance worker who hurt his back after he escaped seconds before a train collided with his dump truck.

Vincent Lago was working as a dump truck operator for Razorback Rail Services on Aug. 24, 2009. Razorback had been hired to do maintenance work on tracks owned by Kansas City Terminal Railway Co.

Burlington Northern Santa Fe Railway Co. was supervising the work.

BNSF had provided a flagman to inform the Razorback employees