Another Subway Accident - $5,950,000 Pain and Suffering Verdict for Man Struck by Subway Car (after returning from methadone clinic and drinking pure rum)

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It never ends, does it? **Another careless person fell onto the New York City subway tracks and was grievously injured**. Then he lawyered up, sued the city and a Brooklyn jury recently found the city's motorman 70% at fault with the result that the injured fellow was awarded **$5,950,000** for his pain and suffering.

Walter Olson's Overlawyered follows these types of cases better than anyone, he finds cases no one else does and he points out the policy considerations we should be thinking about but juries don't. And we have recently addressed the whole issue of subway accidents and resulting large jury verdicts.

In this case, **Sanders v. New York City Transit Authority** (Index # 34003/03; Supreme Court, Kings County; 3/6/09), the jury heard evidence that on December 12, 2002, James Sanders fell onto the tracks as a subway car in Brooklyn was coming into the station at about 15 mph. The jury was also apprised of the facts that Sanders had been returning from methadone treatment and had drunk pure rum before entering the station (a fact he initially denied).

Then, there were these **additional facts**:

- Sanders could not recall why he fell
- the motorman's speed was no more than 15mph
- witnesses testified that the train was no more than 20 feet away when Sanders fell onto the track

This is what it must have looked like just before impact:

So how could any jury conclude that the 41 year old Sanders was not 100% at fault for his own injuries? The answer: the **"last clear chance" doctrine**. That's a long established legal principle, related to the concept of comparative negligence (the apportionment of negligence between plaintiff and defendant) that says a plaintiff may win when, despite the plaintiff's own negligence, the defendant was aware of the danger faced by plaintiff and negligently failed to take available means to avoid the accident.

The defense argued that the train's motorman could not have seen Sanders until it was too late and that the last clear chance

doctrine was inapplicable. After six days of trial, the jury disagreed and found plaintiff only 30% at fault.

As I said, the injuries were grievous, including:

- right **leg amputation** at the knee
- nerve damage causing **permanent blindness in one eye**

Clearly, the injuries sustained and the pain and suffering Mr. Sanders will endure for the rest of his life are enormous. Therefore, I hesitate to mention, but many have this opinion, so it must be asked:

Wouldn't accidents like this be eliminated by waiting for the approaching subway car away from the platform, in the area of this woman?

And then there is a **significant policy issue** too. Should a plaintiff whose own negligence contributes to an accident and his own injury be permitted to recover money damages from a defendant who is also partially at fault. New York has long said yes and juries simply assign respective percentages of fault to the plaintiff and defendant and then the plaintiff recovers accordingly. In other states, such as Virginia, where prominent personal injury attorney Doug Landau discusses this issue and this very case, there would be no recovery at all for a plaintiff found to be as little as 1% at fault.

The "gross" pain and suffering award (i.e., the total before reduction for plaintiff's percentage of fault) was $8,500,000 ($2,500,000 past; $6,000,000 future). Applying a 30% reduction results in a $5,950,000 pain and suffering verdict for the plaintiff.

As is often the case, both in big damage cases like this one and in cases in which plaintiff's own conduct appears to be instrumental in an accident, **there will be an appeal**. We will follow this case as it makes its way through the appeals process and report back with any significant developments.