

The Legal Intelligencer
Vol. 219, No. 91
Copyright 1998 by American Lawyer Media, ALM LLC

November 6, 1998

JURY AWARDS \$5 MILLION TO FAMILY OF MAN KILLED IN ELEVATOR SHAFT FALL

Jeff Blumenthal
Of The Legal Staff

A Philadelphia Common Pleas jury found an elevator company negligent in connection with a warehouse employee's fatal fall into an empty shaft four years ago and awarded the man's estate \$4 million.

In a verdict handed down Wednesday, Keystone Elevator Co. was found 80 percent negligent for an accident involving Jin-Mian Jin, a 34-year-old native of China who was working at Asia Food Warehouse on West Lehigh Avenue in North Philadelphia while his wife was finishing up her doctorate studies at a local college.

The jury awarded a total of \$5 million in damages but found Jin 20 percent negligent for the fall and subtracted \$1 from the verdict.

Jin's attorneys, Mark LeWinter and Linda Degregorio of Mammuth LeWinter & Rosenberg in Bala Cynwyd, argued that Keystone was negligent for violating a state safety code by continuing to service a condemned elevator in the warehouse.

On Jan. 24, 1994, a plumbing contractor was having trouble accessing an elevator when Jin was asked to lend a hand. Jin, according to LeWinter, stuck a pen in the emergency button to open the outside elevator doors and proceeded to step into the shaft without realizing that the elevator car was not there.

"That might seem like a crazy thing to do, but what you have to realize is that was how everyone working in the building used the elevators," LeWinter said. "What we were able to prove was that it wasn't unusual at all to access the elevator that way."

But LeWinter admitted even he had doubts when Jin's widow walked into his office seeking representation.

"I immediately thought to myself, 'Why would someone walk into an empty elevator shaft?'" LeWinter said. "But then I discovered that there was a light switch in the elevator that you could only turn on once you were inside. And the elevator was painted dark blue and gray so you might understand why he mistook the shaft for the elevator."

Keystone's attorney, Lawrence Kelly of Zeris & Ledva, argued that Jin should have been more careful the day of the accident. He said he plans to appeal the jury's verdict if Philadelphia Common Pleas Judge Norman Ackerman turns down a request to reduce the award sum.

"We're obviously dissatisfied at the amount of the verdict," Kelly said. "We think it goes against a substantial amount of the evidence. But it's just one of those off-the-wall verdicts from a jury."

LeWinter said inspectors from the state Department of Labor and Industry declared

the elevator unsafe and sealed it shut in August 1993, but Keystone elevator service company -- the defendant in the case -- unsealed it and put the elevator back in service that same day. While Keystone initially denied that claim, LeWinter said the warehouse owner admitted it during his trial testimony and eventually, so did Keystone's owner.

Keystone owner Earl Hahn initially testified that his company had not touched the elevator after it was put out of service by state inspectors. LeWinter said he countered by showing the jury service-call invoices from the time period between the inspection and the accident. He said it was a key crack in Hahn's credibility.

"We had to go after this guy because if the jury believes him, we lose," LeWinter said. "I think the case ended there for the defense."

Ackerman allowed post-accident invoices to be admitted as evidence, further impeaching Keystone's credibility, LeWinter said. While the plaintiff did not produce an invoice from the day of the accident, LeWinter said he believes Keystone and the warehouse had an under-the-table payment agreement.

"There was paperwork that showed while they serviced two elevators in the building, they only billed for one," LeWinter said. "We think the other one had to be handled under the table."

Kelly said he does not believe the invoices in question proved that Keystone actually serviced the elevator during the time period in question.

"We disagree with that point, but even if we didn't, we would still argue that it doesn't take away from the careless actions of the decedent that day," Kelly said.

After the state inspection, the elevator continued to malfunction with the inside car doors left permanently open. LeWinter said because the inside doors trigger the outside doors to open, the outside doors would not open when the car stopped at a floor -- thus causing employees to use the emergency button.

Jin fell 25 feet, splitting his head open from the impact. He suffered catastrophic brain damage and, several days after the accident, slipped into a coma from which he never awoke. Jin, an electrical engineer who planned to acquire enhanced degree work in this country to further his career, died that November.

The plaintiff sought damages for wrongful death and survival. Under the wrongful death, the jury awarded \$550,000 for Jin's medical bills and \$450,000 to his wife for loss of consortium. The medical bill portion of the judgment will be used to satisfy a workers compensation lien. The \$4 million on the survival claim focused on the pre-impact fright Jin endured.

"I'm not aware of a verdict anywhere in the country that was this high for preimpact fright," LeWinter said.