

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, FRIDAY, FEBRUARY 3, 2017

An **ALM** Publication

## Plaintiffs Hint at Punitives as Sal Army Damages Phase Opens

**BY Max Mitchell,**  
*Of the Legal staff*

Attorneys who made opening statements Feb. 3 in the damages portion of the Center City Philadelphia building collapse case had the Salvation Army clearly in their sights as they talked for the first time about the aftermath of the deadly 2013 building collapse.

Four attorneys speaking on behalf of 19 plaintiffs introduced the jury to several victims either killed or severely injured when a building being demolished collapsed onto a Salvation Army facility with shoppers and employees still inside. Although the statements marked the opening of the portion of trial focused on compensatory damages, all attorneys told the jury that the reason for assessing punitive damages is to send a message to those found liable that their conduct will not be tolerated, and to deter future conduct.

Most attorneys specifically singled out the Salvation Army, which on Jan. 31 was found by the jury to bear most of the fault for the incident for failing to heed numerous warnings signs that the demolition project on the adjacent building was not being done safely.

"My focus [during the liability phase] was on the Salvation Army and it's not going to change," **Kline & Specter attorney Andy Stern** said. "[The plaintiffs] trusted them, and they believed in them, and those people at the Salvation Army betrayed that and took advantage of it."

Stern focused his opening statements on Mariya Plekan, a Ukrainian immigrant, who had been shopping when the building collapsed. Stern showed several pictures as he described her injuries, including amputations of her leg past her hip joints, and the 24-hour care he said she requires. He listed the eight experts he plans to call about Plekan's alleged damages, and estimated her future medical care at about \$50 million.

Stern also told the jury that they would be hearing about the Salvation Army's net worth, and said that oftentimes defendants are not deterred unless they are "hit in the pocketbook."

"Apparently the Salvation Army does really get it. They're still here denying liability," Stern said. The comment elicited a response from Philadelphia Court of Common Pleas Judge Teresa Sarmina.

"This is opening statements, not closing arguments," she said.

Along with Stern, Steven Wigrizer of Wapner, Newman, Wigrizer, Brecher & Miller and Robert Mongeluzzi and Jeffrey Goodman of Saltz Mongeluzzi Barrett & Bendesky each made 15-minute opening statements. At the close of the plaintiffs' statements, defense attorneys told Sarmina that they planned to defer their opening statements until later, as each of the plaintiffs begin presenting their case.

On Jan. 31, the jury determined that all six defendants in the case are liable for the fatal 2013 building collapse that left seven dead and 12 injured. Although the liability portion of the trial lasted for more than four months, the jury returned a verdict in about five hours, finding the Salvation Army was 75 percent liable. The jury further assessed 13 percent liability against STB Investments Corp., the company that owned the building that was being demolished, and 5 percent each against Richard Basciano, the principal owner of that company, and Plato Marinakos, the architect overseeing the demolition project. The jury also found the demolition contractor, Griffin Campbell, and the excavator, Sean Benschop, each 1 percent liable.

The findings also opened the door for punitive damages against

most of the defendants, including the Salvation Army, by finding their conduct showed reckless indifference.

Although there were no apparent objections during the statements Feb. 3, the parties were in sidebar before and after the statements were made, and before the plaintiffs began putting on evidence, Sarmina denied a motion for mistrial that Salvation Army's brought over Stern's opening statement.

Marshall Dennehey Warner Coleman & Goggin attorney John Hare, who is part of the Salvation Army defense team, contended while the jury was out of the courtroom that a statement from Stern indicating the jury would "learn a lot" about the charity right after mentioning that he would later tell them about the charity's net worth was an unfair insinuation about the organization's ability to pay for the damages. The reference, Hare argued, could prejudice the jury when it came to its consideration of compensatory damages, which should not include elements of the company's net worth.

Defense attorneys were otherwise very quiet in front of the jury on Feb. 3, declining to cross-examine a police officer and fire department chief who helped pull bodies from the rubble of the collapsed building.

The plaintiffs opened their case with testimony from the two fact witnesses, questioning them about the recovery efforts and going through pictures of the dust-covered victims as they lay pinned under debris, or were pulled from the wreckage. There were tearful members in the audience as the officials described the process of locating and extracting the victims.

Battalion Chief John O'Neill of the Philadelphia Fire Department likened the recovery efforts to the 10 days he spent recovering victims and remains after the Sept. 11, 2001, terrorist attacks, and characterized Plekan's survival as a "miracle."

"It is a miracle. I hope I'm allowed to say that, but it truly is a miracle," O'Neill, who had been the one to discover Plekan under the debris, said to a silent courtroom. "Thirteen hours. How do you do that?"