

\$109 million personal-injury award in Western Pennsylvania offers insight into tort system



Shanin Specter, son of late Sen. Arlen Specter, successfully sued West Penn Power. He and Jurors have spoken bluntly about the case.

When Carrie Goretzka's two young girls ran out onto the porch of their suburban home 30 miles east of Pittsburgh in the late afternoon on June 2, 2009, what they saw was a scene of unrelenting horror.

"Mommy, Mommy," yelled the oldest child, 4-year-old Chloe. "Mommy is on fire. Mommy is on fire."

Moments earlier, Carrie Goretzka had stepped outside her home in Irwin, Pa., to call the power company to report an outage and downed line on her property. She either stumbled into the line or it fell on top of her - no one knows for sure.

What is certain is that 7,200 volts coursed through Goretzka's body for 20 minutes before a utility crew turned off the current.

Now, Goretzka's death has become the focus of high-stakes litigation between a team of plaintiffs' lawyers from Philadelphia and the West Penn Power Co., a subsidiary of FirstEnergy, a \$16 billion-a-year conglomerate with power plants and transmission lines in six states, including Pennsylvania.

In December, an Allegheny County Common Pleas Court jury in Pittsburgh awarded the Goretzka family \$109 million in compensation, the largest award in a personal-injury case in Pennsylvania history, according to the family's attorney, **Shanin Specter**, son of late U.S. Sen. Arlen Specter.

On Friday, West Penn Power asked the judge in the case to overturn the verdict, citing what it said were numerous legal and evidentiary errors, including "inflamed rhetoric of plaintiffs' counsel."

The case has drawn the attention of legal experts, not only because of the size of the verdict, but also because the trial record provides a detailed glimpse into the workings of the tort system in high-stakes disputes.

Moreover, Specter and the jurors have spoken in unusually blunt terms about the litigation.

According to Specter, nearly four weeks into the trial and one day before the case went to the jury, the company and the plaintiffs' team agreed to settle the lawsuit for \$50 million and a commitment from the utility to fix improperly installed wire splices along 26,000 miles of its system in Western Pennsylvania. The company backed out of the deal the next day, Specter said.

He asserted at trial that West Penn customers had been plagued by an epidemic of downed wires because its

workers had employed improper and easily remedied splicing techniques.

"It's a pretty simple case," Specter said. "A power line fell on a clear day and killed a beautiful woman in front of her kids and her mother-in-law. It is as clear a case of liability as there could be."

Clear responsibility

Virtually no one but the company, which declined to comment on the case, disputes the family's claim that West Penn is responsible for Goretzka's death.

The power line that killed her had collapsed in the Goretzka family's yard twice before, yet Specter introduced evidence that no serious attempt was made to find out why the line failed.

Even longtime critics of the plaintiffs bar, such as the American Tort Reform Association, which last year branded Philadelphia the nation's number-one "judicial hellhole" because of what it said were lawsuit abuses, said the company appeared to be to blame for Goretzka's death. The association has since withdrawn its Philadelphia designation, citing what it said was an improved legal climate.

Yet the case also has raised important questions about how juries, once they establish liability, mete out punishment. Juries in personal-injury cases have no real guidelines on punitive damages, and, strictly speaking, the sky is the limit. Such awards are sometimes overturned or reduced on appeal. Plaintiffs lawyers contend that high awards in civil cases serve as a powerful check on reckless conduct.

The system has drawn fire from critics, who claim the open-ended nature of punitive damages creates an opportunity for skillful trial lawyers to hike awards by manipulating the emotions of jurors.

The cumulative effect is to create costs that everyone ends up paying.

"Some lawyers are extremely good at creating emotion," said Victor Schwartz, general counsel of the American Tort Reform Association and a partner at the Kansas City firm of Shook, Hardy & Bacon L.L.P. Schwartz said huge jury verdicts had the potential to create economic harm.

"It's like [late U.S. Sen.] Everett Dirksen said: 'A billion here, a billion there, sooner or later it adds up to real money,'" Schwartz said.

A fallen line

On the day of the accident, Carrie Goretzka, 39, a bookkeeper whose husband, Michael, was away at work, was chatting with her mother-in-law, JoAnn Goretzka. Both were watching over the Goretzkas' two children, daughters Chloe and 2-year-old Carlie.

The power went out about 4 p.m., and Carrie Goretzka spotted a downed power line in the trees, which had caught fire near the family's split-level house.

She stepped out of the house to call the power company on her cellphone. A short time later, according to Specter, part of the power line came in contact with her. Although there were no witnesses, the company suggested at trial she might have stumbled into the downed line.

Goretzka died in the hospital three days later with burns over 85 percent of her body.

For the jury, it wasn't even a close call: A decision took just 90 minutes.

Jury foreman George Coulston, an executive from Latrobe, Pa., with a doctorate in engineering and applied science from Yale University, said the jurors were satisfied that the \$109 million award was appropriate, given West Penn's conduct. The bulk of that, about \$61 million, constituted punitive damages, and to arrive at that sum, Coulston said, jurors decided to take 25 percent of the company's retained earnings - money left over after dividends and other expenses are paid - about \$244 million.

The balance of the award - \$48 million - was, among other things, to compensate Goretzka's husband and daughters for their loss and the victim's pain.

Though much of the trial was taken up with testimony from witnesses offering technical opinions about whether the company had employed proper splicing techniques, Coulston said that, ultimately, was beside the point.

"The line fell three times," he said. "If they had a strong sense of stewardship for public safety, by the time the line fell the second time, they would have asked themselves, 'Why is this line falling down?' My impression was that it is a very poorly managed company."

And that, says Specter, is exactly the point. Someone, he said, needs to be watching over companies' shoulders, and government regulators often do an inadequate job.

Specter, along with his partner, Tom Kline, runs one of the nation's best-known plaintiffs firms. It has won many big cases, and last year, it gave \$1 million toward construction of a new moot courtroom at the University of Pennsylvania Law School. Kline & Specter has 35 lawyers - seven of whom also have medical degrees, the better to litigate the firm's substantial flow of medical-malpractice cases.

"I wish I could say that government is the best check on the free-enterprise system," Specter said, "but, unfortunately, it is not."