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The Legal Intelligencer

By Claudia N. Ginanni

Of the Legal Staff

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When judges and lawyers evaluate death cases involving older people, [Tom Kline](#) says, they tend to assign damages in inverse proportion to age — the older the decedent, the smaller the award. But Kline says the \$4.5 million verdict he won Wednesday for the estates of a 70-year-old and a 72-year-old shows that juries have different priorities.



"I think that juries value human life preciously regardless of age," Kline said of the jury's decision in *Carter v. Verizon*, a wrongful death and survival action he tried in Philadelphia Common Pleas Court. Although the verdict against one of the defendants in the case will be reduced by a confidential settlement reached the last day of trial, Kline said, the three adult children of Frank Carter Jr. and Mazie Carter will collect "a very substantial portion" of the total award.

The case arose from a Whitpain Township auto accident in which the Carters' Chevrolet Cavalier collided with a Suburban driven by defendant Hildegard Lukof, who had crossed the centerline of a stretch of road at the crest of a hill in order to get past a convoy of Bell Atlantic trucks positioned to replace a broken telephone pole.

Kline said the workers of Bell Atlantic, now Verizon, had arrived at the scene about three hours before the convoy to flag traffic safely around the trucks while the work was underway, but they waited until the trucks had already positioned themselves at the site before they started flagging. That left enough time for a disaster to happen, Kline said.

The Carters had picked up their 11-year-old great-grandnephew, Bryant Lewis, from school shortly before 3 p.m., when the accident happened. Lukof had likewise picked up her 15-year-old daughter. As Frank Carter drove the car toward the crest of the hill, he could see no more than 50 feet of road ahead of him, Kline said, because the road curved at the apex of the hill.

"He drove into a death trap," Kline told the jury.

As Lukof approached from the other side, her path was blocked by about 100 feet of equipment -- the "digger truck", the "bucket truck" and the telephone pole truck -- so she crossed to the other side of the road, into the Carters' lane. Kline said.

The Suburban and Cavalier were badly mismatched, Kline said, and the impact on the Carters was fatal for them both. The assistant medical examiner who performed the autopsy on Frank testified that "his chest was crushed, which led to massive bleeding, and he actually choked on his own blood," Kline said.

Frank Carter died at Abington Hospital about four hours after the accident. He was "awake, alert and conscious" at times during those hours, Kline said.

Like her husband, Mazie Carter suffered multiple traumas, including broken legs and other bones. Kline said a Verizon employee who saw the accident testified that she had a "mouthful of broken glass" after the collision. Mazie was taken by helicopter to Hahnemann Hospital, where she underwent trauma surgery, was placed on a ventilator and lived for 13 days before her family terminated life support machines.

Mazie was "minimally conscious," Kline said, but her trauma doctor, who has since moved to Texas, testified via videotaped satellite-conference deposition that she felt pain and responded to painful stimuli.

Defendants Lukof and Verizon blamed each other and Frank Carter for the accident, Kline said.

Kline said Verizon, represented by Ernest J. Bernabei III of Harvey Pennington Cabot Griffith & Renneisen, retained an expert witness, a former police officer, who opined that Lukof was the sole cause of the accident because she violated Motor Vehicle Code Sections 3301, 3305, 3306 and 3307 by driving in the wrong lane, crossing the centerline, passing on the crest of a hill and passing in a no-passing zone.

Lukof, on the other hand, said that the Bell Atlantic trucks "put her in a jam," according to Kline; she said that she came up behind the truck, was in a dangerous place and had little choice but to go around it.

Kline said Lukof also claimed that she could see the Carters' car for 600 feet before the collision and that Carter was speeding and weaving in and out of his lane.

But according to Kline, a police officer who investigated the accident — the plaintiffs' only liability expert — said that he didn't believe Lukof's account.

The police report concluded that Bell Atlantic had violated PennDOT Regulation 203, which required them to post employees to flag traffic when they blocked a lane.

Apparently the jury didn't believe Lukof, either, it apportioned 70 percent of the liability to Lukof and 30 percent to Verizon.

Kline said he thought the defendants' failure to accept any responsibility for the accident made an impact on the jury. He said that he asked each of the Verizon employees who were present at the scene and testified at the trial, "Will you accept at least part of the responsibility for the accident that killed these fine people?" None would, he said.

Lukof too, refused to accept responsibility, Kline said. When he asked her if she found the police investigation and lawsuit "an annoyance," he said, Lukof "said 'yes' in an unremorseful, unrepentant way."

"The jury did not view her with any more charity than she displayed toward the decedents," Kline concluded.

In the survival actions, the jury awarded \$1.23 million to Frank Carter's estate and \$1.51 million to Mazie Carter's estate, Kline said. Those figures were based on pain and suffering, loss of retirement income and loss of another's consortium.

The couple was two weeks shy of a 50th wedding anniversary, Kline said, and he told the jury that event though they had spent 50 years together, they couldn't be there for each other in their hour of greatest need, when they were dying painfully.

In the wrongful death action on behalf of the Carters' children — John Carter, 53; Frances Smith, 52 and April Watson, 33 — the jury awarded \$823,500 for Frank's death and \$1.6 million for Mazie's, Kline said.

The size of the awards, Kline said, was a product of the family's closeness and testimony that established the Carters, despite their age and infirmities — Frank had high blood pressure and diabetes; Mazie had suffered a stroke — were "vibrant members of the community," active in the American Legion and Zion Baptist Church.

One of the family members who testified was Bryant Lewis, the Carters' great-grandnephew, who was in the car at the time of the accident. The Carters had become his guardians because his mother was unable to take care of him, Kline said, and now he is the ward of the Carters' younger daughter, April. Kline said that helped demonstrate how strong the family is and made a difference in the jury's view of the value of the Carters' companionship to their children.

Lewis too, suffered both physical and emotional injuries in the accident, Kline said, but no action has yet been filed in his behalf; because he is a minor, the statute of limitations is tolled until his 18th birthday.

Kline, however, said that he believes the verdict in this case makes liability *res judicata* in any potential action brought by Lewis.

On the last day of the trial, Kline reached a settlement with Lukof's insurer, he said. The amount agreed upon is confidential, but Kline said that a "very substantial portion" of the total verdict would be collectible.

As for Verizon, Kline said, "It has been represented to us that Verizon does not plan to appeal and will pay their portion of damages and delay damages."

According to Kline, the Carters' son, John, who was a plaintiff and administrator of his parents' estates, is a Verizon employee of 30 years standing. He struggled with the decision to sue his employer, Kline said.

Lukof was represented at trial by Michael McKenna of Margolies and Edelstein. Kline's co-counsel in the case was Eric I. Lerner of Bezark & Lerner, and he was assisted at trial by Kline & Specter associate Matthew Casey.

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