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West Penn Power appeals \$109 million damage verdict in electrocution

West Penn Power Co. has asked a judge to set aside the record \$109 million in damages an Allegheny County jury awarded on Dec. 6 to the family of a Hempfield woman who was electrocuted by a downed power line.

In its 21-page appeal, utility company attorneys allege trial Judge Michael A. Della Vecchia permitted **Shanin Specter**, the attorney for the heirs of Carrie Goretzka, to make unchallenged statements in his closing argument that “appealed to the passions and prejudices of the jury rather than the evidence actually presented at trial.”

The verdict was the highest damage award by a jury in county history.

Carrie Goretzka, 39, died of burn injuries three days after the accident on June 2, 2009, outside the family’s West Hempfield Drive home. The lawsuit was filed on behalf of Michael Goretzka, 43, Carrie’s husband; their two daughters, Chloe, 8, and Carlie, 6; and Michael’s mother, Joann, 69. The Goretzkas’ daughters, who were 2 and 4 years old at the time of the incident, and Joann saw Carrie burning beneath the 7,200-volt line.

West Penn Power’s attorney, Avrum Levicoff, objects in the appeal to Specter telling jurors that “There are so many outrages here ... there are just so many, it’s hard for me to categorize them all.

“Let’s start with this: This case never should have been tried. How can they, with a straight face for three and a half weeks, come in here and contest their responsibility for the death of Carrie Goretzka? This is such a moral outrage.” Specter made the statement as part of his closing.

Levicoff maintains in the appeal that the criticism of West Penn’s constitutional right to defend itself “was beyond the pale and appealed to the passions and prejudices of the jury.”

Levicoff argues that permitting jurors to view three “gruesome” photographs of Carrie Goretzka’s injuries “far exceeded any probative value, thereby prejudicing West Penn.”

Levicoff asked Della Vecchia to throw out the damage award, grant a new trial or reduce the amount of damages.

In a separate matter, the Goretzka family last week asked Della Vecchia to award them interest from the date the lawsuit was filed, which would increase the total damage award to more than \$120 million. After listening to evidence presented at the trial, Della Vecchia permitted jurors to add punitive damages against the utility, which is owned by FirstEnergy of Akron, Ohio.

Specter said on Monday that he was not surprised that the utility chose to appeal the verdict.

“It is typical for the losing side in a trial to appeal. West Penn’s arguments for a new trial are not meritorious,” Specter said.

Specter took issue with Levicoff’s claims in the appeal regarding the Goretzkas’ arguments that the utility should have used infrared cameras to detect problems with potential overheated lines.

“Most disturbingly, they’ve still apparently done nothing to fix their power lines, which are a pressing public safety issue,” Specter said.

Jurors awarded the Goretzkas \$48 million in compensatory damages and \$61 million in punitive damages after deliberating for slightly more than 90 minutes.

In the appeal, Levicoff describes the compensatory and punitive damage award amounts as “excessive,” but takes special issue at the punitive amount.

“In fact, the award of \$61 million in punitive damages amounts to the confiscation of a substantial part of West Penn’s net worth. Because the defendant is a public utility, the excessive award, or any award for punitive damages, to a private litigant runs afoul of the Public Utility Code and the Public Utility Commission’s charge of balancing the needs of consumers to ensure safe and reliable utility service at reasonable rates,” Levicoff wrote.

Jurors were told during the trial that West Penn Power had \$244 million in net assets at the end of the fourth quarter in 2011.