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Injured Teenage Trespassers Awarded \$24.2 Mil.

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A federal jury yesterday awarded more than \$24.2 million to two Lancaster men who suffered serious burns from a 12,000-volt catenary wire when they climbed atop a parked railroad car. Both men were 17 years old at the time of the August 2002 incident.

Plaintiffs attorney Joseph F. Roda of Roda & Nast in Lancaster told the eight-member jury that catenary wires pose a grave danger because they can inflict a lethal shock even if the victim doesn't come in direct contact with them due to the phenomenon of "arcing" in which the electricity "jumps" from the source to any grounded object.

Roda said the two defendants - Amtrak, which owned the property, and Norfolk Southern Corp., which owned the parked boxcar - were aware of the dangers, and also knew that parked boxcars with ladders on the side that make it possible to climb atop them are attractive to teenage boys.

But despite regularly training their own employees about the risks of electrocution, Roda said, the defendants did nothing to prevent injuries to trespassers.

Since the boxcars were parked for four days, Roda said, Amtrak could have turned off the power to the catenary lines or at least posted warning signs that labeled the boxcars as a high-voltage area.

The 11-day trial was bifurcated, and the jury handed up its verdict on the liability phase on Tuesday.

In that verdict, the jury said that Amtrak was both negligent and "wanton," and that Norfolk Southern was negligent. It also found that Amtrak was 70 percent responsible; that Norfolk Southern was 30 percent responsible; and that the two plaintiffs were zero percent responsible.

Following a brief trial on the issue of damages, the jury handed up a verdict on Thursday of \$24,227,435.

The more seriously injured plaintiff, Jeffrey Klein, who suffered burns over 75 percent of his body and was hospitalized nearly 11 weeks, was awarded more than \$11 million in compensatory damages. Plaintiff Brett Birdwell, who was burned over 18 percent of his body, was awarded more than \$588,000.

Birdwell, who is currently serving in the Army in Afghanistan, was not present for the trial. But the jury was able to see Klein's injuries because his burns left extensive scarring on his neck and disfigured his left ear.

The jury also awarded \$12.5 million in punitive damages - \$8.75 million against Amtrak and \$3.75 million against Norfolk Southern Railroad - to be split equally by the two plaintiffs.

The difference in the punitive damage awards apparently reflected the jury's previous apportionment of responsibility - 70 percent against Amtrak and 30 percent against Norfolk Southern.

Lead defense attorney Paul F.X. Gallagher of Gallagher Rowan & Egbert had urged the jury to exonerate both defendants, arguing that the boys were both nearly 18 years old at the time of the incident and should have

appreciated the obvious danger of the catenary wire.

But Roda presented an expert witness in railroad safety, Richard Gill, who told the jury that catenary wires are a "hidden killer" whose danger is not appreciated by ordinary citizens who see birds sitting on them without being harmed.

Birds are safe on such wires because they are not grounded and therefore suffer no shock.

Strung 21 feet above the ground, the catenary wires become dangerous to humans only when a train car is parked below them.

Once Klein and Birdwell had climbed the ladder on the side of the 15-foot-tall boxcar, Roda told the jury that the teenagers were in grave danger because they were just six feet from the live wire.

Gill offered some of the most powerful testimony for the plaintiffs, telling the jury that after studying the facts of the case, he "cannot in all honesty think of a more conscious disregard for public safety."

For such a lethal hazard, Gill said, safety measures should be designed to eliminate the hazard.

The simplest solution, Gill said, would have been to avoid parking any train cars under the catenary wires. If they had to be parked there, he said, the power should have been turned off.

The second line of defense, Gill said, would have been to erect a barrier, such as a fence. And as a "last resort," he said, the railroads could have used "persuasion control" in the form of explicit warning signs.

The "no trespassing" sign that was posted did not serve as a warning, Gill said, because a teenage boy's interpretation of such a sign would be that the only danger was getting arrested for being on the property.

Although the defense team aimed throughout the first phase of the trial to cast the blame on the plaintiffs, it was also clearly gearing up for an appeal due to its disagreement with U.S. District Judge Lawrence F. Stengel's pretrial rulings.

Sitting next to Gallagher throughout the trial was attorney Jennifer DuFault James of Schnader Harrison Segal & Lewis, who was hired to assist in any appeal and attended the trial to ensure that a proper record was established for all appellate issues.

In an opinion handed down in April, Stengel had rejected a defense motion to dismiss the suit, holding that although the "attractive nuisance" theory of liability is most often applied to young children who suffer injuries while trespassing, it may also be used by two 17-year-old plaintiffs.

Stengel found that Pennsylvania courts have recognized the attractive nuisance theory - outlined in Section 339 of the *Restatement (Second) of Torts* - as a valid exception to the general liability standard for trespassers, and that no Pennsylvania court has ever set an arbitrary age limit.

Amtrak's lawyers had argued that "an extensive search of Pennsylvania case law has failed to produce a case where Section 339 was successfully applied to a 16- or 17-year-old plaintiff."

The defense team noted that the two plaintiffs were both close to the age of 18 at the time of the accident. Klein was just 48 days shy of his 18th birthday, they noted, and Birdwell was 100 days shy.

But Stengel refused to dismiss the suit, saying that "the plaintiffs have presented some evidence that 17-year-old males generally do not have fully mature brains, and as such cannot fully control their impulses or appreciate some risks," Stengel wrote.

At trial, Roda called an expert witness who testified that the brains of adolescent males continue to develop into their early 20s.

Roda also set out to avoid the tricky legal issue by trying the case under both the adult and minor standards.

In its verdict, the jury found Amtrak, as the owner of the premises, was liable under both theories, saying in response to consecutive questions that Amtrak's conduct was both "wanton" and "negligent."

The claims against Norfolk Southern, the owner of the boxcar, were tried under a negligence standard.