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## A \$24.2M question

*What prompted a federal jury to award that stunning sum in the case of two young men badly burned on a railroad car here?*

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Lancaster New Era

Published: Oct 27, 2006 2:13 PM EST

**LANCASTER COUNTY, PA** - The question before the jury wasn't about trespassing. The two teenagers climbing on top of the train car admittedly shouldn't have been there. "Had they fallen off, the responsibility would be totally theirs," Lancaster attorney Joseph F. Roda, who represented the young men, told a federal court jury this week.

"If the train had moved and they had suffered some injury because of that, the responsibility is totally theirs," Roda said.

"But for a hidden, high voltage hazard at the top of that," Roda asked the jury, "unannounced, unwrapped, unmonitored, who's got the responsibility for that?"

According to the jury — which on Thursday awarded \$24.2 million to the two young men seriously injured in the August 2002 incident — the responsibility belonged solely to the railroad.

Under the law, a person or corporation may not create what it knows to be a risk of death or serious harm to another person, Roda explained, especially when the risk is not necessary.

"That rule applies no matter who that person is," Roda said. "It doesn't matter what the status is for the person for whom that risk is created, even if the person is a 'trespasser.' "

"Both Amtrak and Norfolk Southern knew a lethal danger existed but failed to post any warning signs," Roda said. What's more, he added, there was not even a reason for electricity to be turned on over the trains.

"We're extremely disappointed in the judgment and plan to appeal," Rudy Husband, Norfolk Southern's director of public relations said today.

Both defendants in the case, Norfolk Southern and Amtrak, have the right to appeal the jury's verdict and awards.

Jeffrey Klein and Brett Birdwell, both from Stroudsburg and both 17 at the time, were in Lancaster for the weekend to visit Klein's mother.

On the evening of Aug. 10, 2002, the teenagers climbed the Norfolk Southern railroad car which was parked on Amtrak property, near Ross Street and New Holland Avenue.

They left their skateboards on the ground and climbed a ladder leading to a catwalk on the roof of the boxcar, Roda said, hoping to see a view of the city.

But, Roda explained, the 12,500 volts of electricity running through an uninsulated catenary wire suspended about 6 feet above the boxcar was enough to arc a debilitating jolt into Klein without his even touching the wire

"He thought he'd been struck by lightning," Roda said.

Birdwell, who saw his friend suddenly collapse before him with his clothes on fire, was burned while trying to help Klein, Roda said.

A burst of bright light and a sound like thunder alerted railroad workers and nearby residents, who called 911.

Klein suffered serious burns over 75 percent of his body, including his left ear, neck, shoulders, arms, left hand, back and groin. After months of hospitalization, he remains permanently scarred and disabled with limited use of his left hand.

Birdwell suffered serious burns to 12 percent of his body. After his hospitalization and recovery, he joined the U.S. Army and is currently serving in Afghanistan.

The 11-day trial was held in U.S. District Court in Philadelphia before federal court Judge Lawrence F. Stengel, who previously served as a Lancaster County judge.

Philadelphia attorney Paul Gallagher was lead counsel for the railroads.

The jury was selected from five counties in southeastern Pennsylvania. No Lancaster County residents were on the panel.

Jurors heard both young men talk about their injuries — Klein, who was in the courtroom, and Birdwell from a videotaped deposition.

Even though the jury could have assigned some or all of the blame to the boys, it concluded that 70 percent of the fault fell to Amtrak and 30 percent of the blame went to Norfolk Southern.

After further deliberations, the jury awarded Klein about \$17.3 million and Birdwell about \$6.8 million.

The amounts were determined by their medical bills and by calculating lost future earnings, pain, suffering and loss of life pleasures, and punitive damages.

Jurors determined Norfolk Southern and Amtrak could have prevented the accident by placing warning signs alerting people to the electrified catenary wires, which power locomotives, Roda said.

During the trial, Roda argued that there was no reason for the electricity to be on since the railroad cars had been parked on the tracks for storage.

The jury was shown a 1971 Federal Railroad Administration report and an internal Amtrak memo from the 1980s which revealed the company was well aware of the dangers of catenary wires.

The companies regularly instruct their employees about safety measures and post warning signs, railroad employees said.

The crime of trespassing, Roda said in his remarks to the jury, could result in being chased off a property by someone, being taken to the police station "and maybe getting a stern warning."

But being so critically burned, Roda told the jury, has been "a life-altering thing for him (Klein), a prison from which he will never escape."

After the case ended Thursday afternoon, Roda said members of the jury — and some of the defense attorneys — talked to Klein and told him they wished him well, saying, "we're pulling for you" and "have a good life."