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Damages For Fatal Natural Gas Explosion In Residence Upheld

$4.5 Million Awarded for Death of 20-Year-Old

Patrick Hagerty

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A $4.5 million wrongful death verdict awarded to the family of a man who died in a natural gas explosion was not excessive, the Missouri Court of Appeals' Eastern District has ruled.

Laclede Gas argued that the award should be remitted because it was the largest wrongful death award in Missouri.

But the court disagreed.

"[The man] had burns covering nearly his entire body...[and] he suffered for eighty days with these burns before he died," wrote Judge Robert G. Dowd Jr. for the court. "Our research reveals that in Missouri only verdicts much larger than the verdict here have been remitted on appeal."

The decision is Coggins, et al. v. Laclede Gas Company, MLW No. 27422, issued on Dec. 12.

'Destroyed Family'

"There were no punitive damages awarded in this case," said Patrick Hagerty, the St. Louis lawyer who represented the family.

"Although Laclede Gas argued this was the largest wrongful death verdict in Missouri, the court was correct in not remitting it.

"Remittur comes into play when the jury goes off the chart in its award," he said.

But Hagerty believes the award was justified -- "I have never seen a family so destroyed or a victim who was injured so badly live for 80 days."

"This is a good opinion with regard to remittitur," said St. Louis attorney Theresa A. Appelbaum.

"It's nice to see that the Eastern District Court of Appeals agreed with the jury that a $4.5 million verdict for the death of a 20-year-old son who endured the most painful and devastating injuries a person could suffer for 80 days prior to his death was not so grossly excessive as to shock the conscience."

Appelbaum and St. Louis attorney Stephen Ringkamp represented a couple who sued Laclede Gas in a different case after they were injured in a natural gas explosion.

Appelbaum said, "Laclede Gas Company's own witness acknowledged in the Coggins case that the copper pipe fitting was not flared and that the pipe fitting involved was the source of the leak.

"Because there was no evidence that the fitting had been altered or changed it was reasonable for a jury to find that Laclede Gas Company's failure to flare the fitting over 20 years ago caused the leak."

"I thought the court was right on the money," said St. Louis lawyer John Simon, who recently settled a natural gas explosion case against Laclede Gas for $8 million.

"This case is important because the Court of Appeals recognizes the concept of 'negative evidence' in the claim that no odorization was added to the gas," Simon said, referring to the difficulty a plaintiff has in proving the non-existence of odorant.

"As a practical matter, in future cases, the Coggins decision will allow plaintiffs to make the claim that there was no odorant in the gas," Simon said.

It makes sense, he added, because "a reasonable person would get out of the house if he or she smelled natural gas."

Simon also distinguished the Coggins case from his own.

"In Coggins, the claim dealt with the failure to flare a line, which was one particular incident. In our case, we were dealing with a course of conduct Laclede Gas engaged in over time."

Referring to the damage award, Simon stated, "The court strongly said in its opinion that in burn cases, a $4.5 million is not excessive under the circumstances."

'Cooked' Nerve Endings

On April 7, 1991, Thomas Coggins was severely injured in a natural gas explosion that occurred in his home. At the time of the accident, he was 20 years old and lived with his parents Tommy and Rita Coggins.

Thomas had burns covering most of his body and his nerve endings "were literally cooked." Doctors were required to debride the wounds, a process that involved slicing off burned skin to access areas that were bleeding. He was placed on a breathing machine, endured sepsis, multiple organ system failure, pulmonary failure, infections and renal failure. He also suffered from massive fungus and bacteria infections. Thomas died 80 days after the accident.

The parents sued Laclede Gas, alleging that a copper gas line that was installed in 1970 for a gas grill and gas light was improperly flared and that the natural gas was not properly odorized. A jury returned a general verdict of $4.5 million for the parents $120,000 for property damage and $4,380,000 as compensation for their son's death.

Laclede Gas appealed.

Flared Gas Line

In its first argument, Laclede Gas claimed that "there was not substantial evidence that Laclede failed to properly flare the copper gas line which caused the leak, and that there was not substantial evidence that this caused the explosion."

Laclede asserted that "none of the witnesses could conclusively testify that Laclede failed to flare the fitting and that the unflared fitting caused the gas leak."

But Judge Dowd disagreed.

"To make a prima facie showing of causation, [the parents] must show [Laclede's] negligent conduct more probably than not was the cause of the injury," he said.

"[Laclede's] negligence need not be the sole cause of the injury, but simply a contributing cause.

"Absolute certainty is not required in proving a causal connection between a negligent defendant's actions and the plaintiff's injury," Dowd stated.

"This connection can be proven by reasonable inferences from proven fact or by circumstantial evidence -- direct proof is not required; the jury may infer causation from circumstances."

Reviewing the record, Dowd said that "there was substantial evidence for the jury to find that Laclede had a duty to flare the fitting when installing the pipe in that there was testimony that the standard is to flare fittings in gas lines.

"We also find there was substantial evidence for the jury to find that Laclede installed the gas line and breached its duty by not flaring the fitting when it installed the pipe."

Dowd specifically cited the testimony of a Laclede Gas expert as evidence when he testified that "when you look the iron pipe, the threads were where they were compromised, were broken and pulled, and then there was a point where there was a copper pipe, a flared fitting, and this flared fitting had been pulled out. The flare bell that normally is behind the nut wasn't there. The pipe had been pulled straight out which is fairly unusual."

Dowd said, "[Laclede's expert] explained how an unflared fitting could come apart and that this pipe fitting was not flared."

He also rejected Laclede's claim that 20 years is "too long between the time of installation and the explosion for a jury to find that the unflared fitting caused the leak."

He cited a prior case involving a mirror which fell two years after it was installed and injured the plaintiff. In that case, the court "reasoned that there was no evidence that the installation of the mirror had been altered or changed by any intervening event.

"This court further stated a plaintiff should not be denied the right to have her case submitted to the jury unless her own evidence discloses another occurrence which might as well have caused the injury."

Dowd said, "Here, there was evidence that the improperly flared fitting in the pipe installed by Laclede was faulty.

"There was no evidence that the installation had been altered or changed by an intervening event.

"As the fixed piping is somewhat permanent," Dowd said, "the jury would not have to resort to conjecture or speculation to infer the negligent condition of the pipe could have existed for over twenty years prior to [the son's] injury."

Odorized Natural Gas

Dowd turned to Laclede's second argument that "there was not substantial evidence of Laclede's failure to properly odorize its natural gas."

Dowd noted that "[n]atural gas has no odor.

"By law, gas companies are required to put odorant in gas as a warning to their customers of a leak.

"A combustible gas in a transmission line or distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell," Dowd said.

"[The parents] established by substantial negative evidence that the natural gas lacked odorant. Under certain circumstances, negative evidence that the presence of gas was not detected by a person with an ordinary sense of smell may constitute probative evidence from which a jury can properly find a negative fact, that the gas was not sufficiently odorized."

He reviewed the testimony of the parents' expert witness who "testified that the natural gas might have been leaking for two to four days before the explosion" and that "he thought the level was very high and detectable in excess of thirty hours before the explosion."

In addition, the parents testified that they did not smell gas 23 hours before the explosion and that "they knew what gas smelled like and did not smell gas before leaving" and that their son also had a normal sense of smell.

"A reasonable person with a normal sense of smell would have left the house if gas had been smelled," Dowd stated.

"[W]e cannot declare as a matter of law that the evidence introduced by Laclede establishes compliance with the duty to odorize. The evidence as to odorization was contradicted.

"In this situation, the existence, adequacy, and sufficiency of odorant were issues for the jury to resolve and thus, the [parents] made a submissible case."

Conscience Not 'Shocked'

Laclede then argued that the $4.5 million verdict was excessive and that the trial court erred when it refused to enter a remittitur order.

Dowd said, "In evaluating the excessiveness of an award, the reviewing court should consider the evidence in the case and the verdict in light of the following factors: (1) loss of income, present and future, (2) medical expenses, (3) decedent's age, (4) the nature and extent of the injuries, (5) economic factors, (6) awards given and approved in comparable cases, and (7) the superior opportunity for the jury and the trial court to appraise decedent's injuries and other damages.

"We further note Section 537.090 indicates that in an action for wrongful death, the trier of facts may award such damages as the deceased may have maintained in an action for injuries and suffering had death not ensued," Dowd said.

"Crucial factors in the computation of consortium and companionship damages to a parent for the loss of a child or to a child for the loss of a parent must include the physical, emotional, and psychological relationship between the parent and the child.

"The pain suffered by the decedent between the time of injury and death is also considered in awarding damages," he said.

"Here, the family suffered greatly as a result of the gas explosion in their home.

"[The parents] lost their only child.

"They were a close family that often went camping together," Dowd noted.

"After the explosion, the neighbor found [the son] in front of the house rocking in pain immediately after the explosion," Dowd said.

Dowd listed the injuries and pain the son suffered during the 80 days following the explosion and noted that although the son was not working at the time of the explosion, he had served in the U.S. Marine Corps and it would have been "reasonable to consider his parents may have relied on his future income as he was their only child."

"Laclede notes that this is the largest jury verdict in Missouri for a wrongful death action."

Dowd said, "Our research reveals that in Missouri only verdicts much larger than the verdict here have been remitted on appeal.

"Laclede has not directed us to and we have not discovered a case where an award of this size has been remitted on appeal and we find no reason to remit the award.

"We find the award is not so grossly excessive that it shocks the conscience," Dowd said, affirming the judgment.