

1 P-R-O-C-E-E-D-I-N-G-S

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3 IN OPEN COURT - JURY PRESENT

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5 THE COURT: Mr. Specter.

6 MR. SPECTER: Thank you, Your Honor.
7 May it please the Court, Counsel. JoAnn
8 and Mike Goretzka, the Goretzka family.
9 Ladies and gentlemen of the jury, good
10 morning.

11 I'm writing down the time. I'm taking
12 off my watch; and I'm putting it right in
13 front of me here (indicating), because I'm
14 going to try not to go for 2 hours and
15 42 minutes. I'll do my best.

16 Chief Justice Earl Warren said that
17 aside from putting on the uniform of your
18 country in time of war, the most important
19 thing you can do as a citizen is serve on
20 a jury. He said it was more important
21 than voting and more important than paying
22 your taxes. I'm not sure that you felt
23 that way when you were summoned to this
24 courthouse a month ago, it seems, close to
25 a month ago.

1 But I'll bet you feel that way now.
2 I'll bet you do. I'll bet you do. And
3 while I join Mr. Levicoff in thanking you,
4 I don't necessarily completely share his
5 view concerning hardship. I do know that
6 it has been a hardship for you to be here
7 and be away from your daily duties, but
8 all of us have important things to do in
9 our lives. Sometimes the important things
10 we have to do in our lives, they're not of
11 our choice.

12 Your dad gets sick, and you have to go
13 take care of him. Or you have a child
14 that needs special things, a special-needs
15 child. Or because you're a citizen of
16 Allegheny County and you take a jury
17 summons seriously, you're asked to resolve
18 a remarkably and enormously important
19 issue. Not just for the Goretzka family
20 and for West Penn Power, but for the
21 community.

22 And, respectfully, I think that's an
23 honor. I think it's an honor. I'm sure
24 there are a lot of people sitting back
25 here who would love to be able to sit in

1 your seat because of the enormity of the
2 responsibility that you have and because
3 of the right and obligation that you have
4 to make this right. So I thank you for
5 your service, but I confess a bit of envy
6 for myself.

7 Mike, what are you thinking about?
8 What do you think he's thinking about
9 today? What do you think he thought about
10 this morning when he got up? Last night
11 when he went to bed? Last month? Last
12 year? As the fall has turned to winter
13 and winter will turn to spring, what does
14 he think? What does Chloe think? What
15 does Carlie think? What does JoAnn think?

16 There is a poem. This is just a short
17 excerpt from a poem, but I kind of liked
18 this. "At the rising of the sun and going
19 down, I recall her. At the blowing of the
20 wind and in the chill of winter, I recall
21 her. At the opening of the buds and in
22 the rebirth of spring, at the shining of
23 the sun and in the warmth of summer. At
24 the rustling of the leaves and in the
25 beauty of autumn, I recall her."

1 I'm reminded that Sunday was the three
2 and a half year anniversary of this
3 tragedy. If you have little kids, you
4 know that kids count things in half years.
5 "How old are you?" "I'm three and a
6 half." So I'm sure that the kids think
7 about that, a half-year anniversary, just
8 like they think about the full-year
9 anniversary.

10 And I'm reminded of what the English
11 philosopher of the 18th century, Edmund
12 Burke, said about something awful that had
13 happened when he was living. He said,
14 "This is an event that's happened upon
15 which it is difficult to speak and
16 impossible to be silent." It's difficult
17 to speak and I have difficulty speaking,
18 but it's impossible to be silent about
19 this.

20 And when we're finished with the
21 speeches and Your Honor charges you and
22 you go deliberate and come back and
23 announce your verdict, you will break the
24 silence; because this horrible thing
25 that's happened, you will decide what will

1 be said. You. Not me. Not defense
2 counsel. You.

3 There are so many outrages here.
4 There are just so many, it's hard for me
5 to catalog them all. Let's start with
6 this. This case should never have been
7 tried. Never have been tried.

8 If this case would have to be tried,
9 West Penn's liability should never have
10 been contested. How can they, with a
11 straight face for three and a half weeks,
12 come in here and contest their
13 responsibility for the death of Carrie
14 Goretzka? That is such an immoral
15 outrage.

16 This woman was minding her own
17 business, taking care of her children,
18 thrust into an emergency not of her own
19 making, killed in her yard, her yard, by a
20 power line that fell on a clear, sunny day
21 through no fault of her own.

22 They make us prove their
23 responsibility, and they have the nerve
24 and the outrageous insult to blame her for
25 her own death. And I'll come back to

1 that.

2 As the lawyer for the family, I could
3 have tried the case very differently. I
4 could have simply proven that it was a
5 clear, sunny day and the line fell. I
6 could have relied upon that fact by
7 itself. I don't have to prove anything
8 else.

9 Because under the law, when something
10 occurs that would not ordinarily occur,
11 unless there was negligence -- negligence,
12 lack of due care -- then the mere
13 happening of that incident is sufficient
14 to prove that the Defendant is
15 responsible.

16 It goes back hundreds of years. When
17 we were in law school, we read a case
18 about a man walking down a street; and a
19 barrel comes out of a second-floor window;
20 and it hits him walking down the sidewalk.
21 He sues the owner of the property and
22 says, "A barrel hit me coming out of the
23 second-floor window."

24 The case went to court, and the judge
25 made the determination that you don't have

1 to prove why the barrel rolled out the
2 window. It's unimportant. The person who
3 owns the property has a responsibility to
4 keep barrels from rolling out the window.
5 The mere fact that you were struck by a
6 barrel walking down the sidewalk is
7 enough.

8 We have a term for it in Latin. It's
9 called *res ipsa loquitur*. We learned it
10 in the first two weeks of law school.
11 "The thing speaks for itself" is what that
12 means. And we shorten it to *res ipsa*.

13 What that means is that in a case like
14 this, where a power line shouldn't fall
15 out of the sky on a clear, sunny day
16 without any trauma to it, you don't have
17 to prove anything but that.

18 Now, we, of course, went a step
19 further to show you exactly why it
20 happened. But we didn't have to do that.
21 But His Honor is going to charge you that
22 if you find that this is the kind of an
23 incident that would not ordinarily occur,
24 except in the presence of negligence, then
25 we've met our burden of proof.

1 You don't have to consider these
2 issues about wire brushing, about the
3 splices, which splice, the second splice,
4 the third splice. You don't have to
5 consider any of those things. You only
6 have to decide whether this wouldn't
7 ordinarily happen unless there was
8 negligence in the installation and/or the
9 maintenance of the line.

10 And if you find that, we've proven our
11 case on negligence, period. End of story.
12 And you know I went through it with
13 literally half a dozen of the West Penn
14 people, that exact question.

15 And I think I went through that when I
16 was finishing the cross-examination of
17 Mr. Turek. I went through each of those
18 individual questions with Mr. Turek. "Did
19 you know that the lineman, Mr. Jones, said
20 that an automatic splice properly
21 installed should never fail?" "No, I
22 didn't know that, but I'll take your word
23 for it," he told us.

24 And Mr. Falco, "A properly installed
25 sleeve should never fail." And

1 Mr. Schellhaus, the trainer, "A power line
2 shouldn't just fall on a clear, sunny
3 day." And Miss D'Angelo, the woman in
4 standards who was in charge of this
5 product, "If there is proper installation,
6 there should be no problem with the splice
7 holding."

8 And Mr. Romano, "Never saw a line fall
9 for no traumatic reason." And Dr. Laird
10 said that. And Mr. Havlik from Hubbell
11 said that. And Gary Smyda said that. He
12 said that all normal causes for a line
13 falling or failing were eliminated by him
14 as a possible explanation for how this
15 line fell.

16 So six West Penn Power employees, six
17 experienced people; two linemen, a
18 trainer, the head of standards, Mr. Romano
19 had many jobs in the company and who was a
20 top man in claims and Mr. Smyda, also many
21 jobs, an engineer at the company, all said
22 the same thing.

23 Do I even have to call them for you to
24 understand that? When you came into the
25 courthouse, if I had said to you, "Should

1 a power line fall on a clear, sunny day?
2 And if it does, would that ordinarily be
3 the fault of the power company?" Wouldn't
4 you all say to me, "Well, of course,
5 Mr. Specter"?

6 And you would tell me that because all
7 of us, we pass under power lines every
8 day, dozens of them, maybe hundreds of
9 them, all of us every day. We have to
10 trust the integrity of the power lines.
11 We must. It's a matter of life and death.

12 And so the privilege to be able to
13 transmit and distribute high-voltage
14 electricity in our community and across
15 the Commonwealth and across the country,
16 it's an awesome right and privilege. But
17 with it comes responsibilities, and those
18 responsibilities include making sure the
19 lines don't fall.

20 And if they fall on a clear, sunny
21 day, you step up; and you say, "The line
22 fell. It burned your grass, Mr. Goretzka.
23 We're terribly sorry, and we're going to
24 compensate you for your grass. And, by
25 the way, more important for you and your

1 family, we're going to find out why that
2 line fell.

3 "In fact, we know it fell twice.
4 We're really going to find out why it
5 fell, because we don't want it to fall on
6 anybody in your family. We don't want it
7 to fall on one of your kids or your wife
8 or yourself." Of course, that didn't
9 happen; did it?

10 When it does fall on Carrie Goretzka,
11 you step up; and you say, "This shouldn't
12 have happened. We're going to work this
13 out. I know we can't replace your wife,
14 but we're not going to make you try your
15 case; and we're going to fix things at the
16 company."

17 So just on the idea of *res ipsa*, as I
18 explained to you, we've proven our case.
19 But we went beyond that. And, of course,
20 you know, as we discussed in our opening,
21 that the power company, because they have
22 this special position in society, the
23 privilege and the right to transmit high-
24 voltage electricity, that they have the
25 legal duty to use the highest degree of

1 care practicable, highest degree, highest
2 degree. I'm sorry, but it can't be said
3 too many times. And His Honor is going to
4 tell you that in his charge to the jury.

5 And it's not like, as Mr. Levicoff
6 tried to say to you in his opening speech,
7 that Carrie Goretzka had the highest duty,
8 because she didn't. She had only the duty
9 to act reasonably. She doesn't transmit
10 and distribute high-voltage electricity.

11 She's a mom -- or she was a mom and a
12 landowner and a person confronted by an
13 emergency. She had an obligation to act
14 reasonably and nothing more.

15 Now, we've proven that the cause of
16 this failure was improper splice
17 preparation. As I said, we didn't have to
18 prove line failure. And you have a
19 perfect right to have a much shorter
20 deliberation than you might otherwise have
21 if you just say, "We don't need to get
22 into this conversation, because the line
23 shouldn't have fallen."

24 And if you feel that way, you can skip
25 over the three weeks of argumentation

1 about scratch marks and all the rest of
2 it. Some of you may want to discuss that,
3 so I need to. I know Mr. Levicoff talked
4 about it. But I do note, kind of
5 interesting, I thought, he started his
6 speech yesterday at 12:40 p.m. I don't
7 know if you noticed this.

8 It went for an hour -- it went until
9 2:28 p.m., an hour and 48 minutes, before
10 he actually ever talked about why the line
11 came down. Did you notice that? It took
12 him an hour and 48 minutes to get to the
13 only really important question in the
14 case: Why did the line come down? If you
15 get past res ipsa.

16 What does that tell you, by the way?
17 What does it tell you when you're bobbing
18 and weaving for so long and filibustering
19 for so long that you don't even get to the
20 central issue for an hour and 48 minutes?

21 Okay. But, first of all, what is the
22 evidence that the wire came down because
23 of improper splice preparation? Failure
24 to wire brush. The evidence is
25 overwhelming -- now, this is not a

1 criminal case. We don't have to prove
2 anything beyond a reasonable doubt. We
3 only have to prove more likely than not.

4 Imagine the balance scales. If the
5 scales tip ever so slightly in our favor,
6 then we have met our claim. But here the
7 scales tip like that (indicating). First
8 of all, it was clear from the physical
9 evidence that there was no wire brushing
10 on the failed side of the failed splice.

11 This is the piece right here
12 (indicating). This is the piece that was
13 inside the failed side of the failed
14 splice (indicating). This had the end cap
15 on top of it. There was a little melting
16 at the inside end of the end cap, but not
17 much. And the outside is pristine.

18 And it sat like this (indicating).
19 You saw that a million times. And it's
20 not badly corroded. It's not melted. You
21 can see all, I think, seven strands very
22 well. This was passed around. This was
23 shown to you. There were photographs
24 shown. There were blowups shown.

25 And there is no wire brushing here.

1 Who says that? Mr. Havlik, Mr. Dagenhart,
2 Dr. Laird, who Mr. Levicoff admits is a
3 preeminent materials scientist. Is there
4 any contrary evidence? Mr. Turek says
5 there are a couple of areas that may be
6 wire brushing, may be. He doesn't say
7 it's wire brushed. He points to a couple
8 of stray random marks that he says might
9 be wire brushing.

10 Now, don't you think if it was wire
11 brushed, he would say so definitively? Do
12 you know how these wire brushes work?
13 This is the one that they used
14 (indicating). I counted them up. There
15 are 30 rows on each side. That's 900
16 bristles. 900.

17 I know they don't all make contact
18 with the conductor at the same time; but
19 good wire brushing, you're going to have
20 hundreds of these bristles making contact
21 with the conductor. You're not going to
22 have a couple stray things which you say
23 is wire brushing. If it's brushed, it's
24 brushed; and you're going to have a lot of
25 brush marks on the conductor.

1 Now, you might say, "I would like to
2 see this for myself. I would like to take
3 this back into the jury room. I would
4 like to look at it." I'm going to apply
5 Mr. Gorbachev's famous comment, "Trust but
6 verify." You're welcome to.

7 If you want some piece of evidence in
8 this case, just ask for it. It will be
9 sent to you. If you want a photograph,
10 you want a diagram, you want splices, you
11 want the wire, if it's in evidence, you'll
12 get it. Just keep it in order, but you'll
13 get it.

14 So the first thing is the physical
15 evidence. It's absolutely clear it was
16 not wire brushed. That should be the end
17 of the story. Particularly when, by the
18 way, it's Christopher Havlik who says so.

19 I know there has been a lot of effort
20 here by Mr. Levicoff to run down
21 Mr. Havlik, but can we just step back for
22 a second? Can we just collectively apply
23 our common sense to the question of
24 Mr. Havlik, if we may?

25 Some of you are in business, some of

1 you aren't; but I think you all understand
2 the basics of business. West Penn,
3 Allegheny Power, First Energy, these are
4 all customers of Hubbell. Hubbell can't
5 survive as a company if they're acting
6 contrary to their customers; right?

7 I mean, there are other places to buy
8 splices. We know that. We've seen the
9 names like MacLean. I forget all the
10 names. Maybe you have them in your notes.
11 You can buy splices from a lot of people.
12 It's a competitive business. We think
13 it's like, you know, in the Hubbell --
14 sort of the Hubbell/West Penn, you know,
15 Allegheny/First Energy relations. They're
16 a supplier; right?

17 Hubbell is a supplier to West Penn.
18 Their supplier comes in and testifies that
19 their men didn't properly wire brush the
20 conductor and they're at fault for the
21 death of Carrie Goretzka. The death.

22 That's not too good, is it? That's
23 not going to get you on the Christmas card
24 list, is it? That's maybe not going to
25 help you on your sales tomorrow, next

1 week, next month, next year. Maybe
2 forever.

3 Do you think he wants to come in here
4 and say that? Do you think he wants to
5 say that in deposition? Do you think he
6 wants to come out and look at these things
7 twice?

8 Don't you think if he thought there
9 was wire brushing on this thing right here
10 (indicating), they would have brought him
11 into court? They would have put him up as
12 their star witness. "This is the man we
13 rely on," they would say. And he is.
14 Their company is.

15 When they have these burn-down
16 situations or questionable situations or
17 evidence of melting on their conductors
18 and splices, they go to Hubbell. They
19 say, "What happened?" We have reams of
20 evidence of that. They go to the
21 manufacturer.

22 If you were running a company like
23 West Penn, wouldn't you do that? Of
24 course, you would. That is sound business
25 practice. I commend them for that. And

1 if he had said he did nothing wrong, they
2 would bring him into court and say, "This
3 man knows more than we do about this. He
4 sees these things regularly." He
5 inspected 250 failed splices, 20 of which
6 -- most of which had failed because of
7 improper installation of the wire, you
8 know, when you pull it in, the tug and so
9 forth.

10 He told us that when he testified.
11 About 20 had been burn-downs because of
12 improper splice application. He's the man
13 you would expect them to bring, not me.
14 He's not getting any business from Michael
15 Goretzka.

16 The law firm of Klein & Specter isn't
17 buying any Hubbell splices. And we're not
18 likely to in the future, are we? What do
19 they say? They say, basically, "Well, he
20 is a liar." I mean, I know the word
21 wasn't used, but that's what it amounts
22 to. Of course, the manufacturer will say
23 it was improper installation, because you
24 wouldn't want to blame the splice for
25 something that would have happened. Did

1 you hear that yesterday?

2 But if that's really true, then why
3 does Jill D'Angelo regularly send their
4 failed conductor and failed splices to
5 Hubbell, to MacLean, to look at? If she
6 just believes they're going to get a --
7 I'll use the polite word -- baloney
8 answer, then why would you do it?

9 You wouldn't do it. She does it
10 because she wants to know what they think.
11 It's important. It's vitally important.
12 It's life and death important. And, in
13 fact, there is evidence in the record that
14 sometimes the company that manufactures
15 the splice says, "Yeah, we've had a
16 problem with our manufacturing."

17 Remember -- I think it was MacLean.
18 That was their name. I may have the name
19 a little bit incorrect. Back in 1999 they
20 wrote back to Miss D'Angelo; and they
21 said, "There was improper splice
22 application here, but there was also a
23 manufacturing problem that we had." They
24 said, "Yes, we had a manufacturing
25 problem." They didn't run away from it.

1 They're not a bunch -- the
2 manufacturers are not a bunch of liars, as
3 Mr. Levicoff would have it. And why don't
4 they lie? Why don't they lie? Well,
5 maybe because they realize that this is a
6 life and death issue, because the falling
7 of an energized conductor can kill people.

8 And this is too important to mince
9 words about. That's true about everything
10 we're looking at here. I mean, if West
11 Penn were in the business of manufacturing
12 comic books instead of transmitting and
13 distributing high-voltage electric power,
14 some of this could be not excused; but you
15 could sort of say, "Well, look, they're in
16 the business of comic books."

17 So they make a mistake in how much ink
18 they used, the paper was a little bit old,
19 maybe the colorations are not great on the
20 animations. Who cares? Who cares? So
21 you don't have to buy the comic book.

22 This is not comic books. Mr. Goretzka
23 over here, he didn't have any choice on
24 his electric supplier. They're a
25 monopoly. You know that. He writes a

1 check every month to them still today,
2 even after all this. West Penn knows that
3 they're it. They're it. They know.
4 "Hey, we got this. We have this
5 territory. We're the provider of
6 electricity."

7 They have a duty to be extra careful
8 because of all of these privileges and all
9 the dangers involved. There was this
10 great justice, Cardozo. There might be
11 some young lawyers out there. I think in
12 the first couple of weeks of torts class
13 we read a case he wrote called Falsgraf.
14 He said there, "The risk reasonably to be
15 perceived defines the duty to be obeyed."

16 What was the risk reasonably to be
17 perceived by West Penn Power? Death from
18 a falling power line. That defines the
19 duty to be obeyed. How high is that duty
20 under that nature of risk? Huge. That's
21 why the law imposes the highest duty of
22 care practicable on them.

23 Okay. Back to how we know that this
24 was not wire brushed. We know because we
25 can see with our own eyes. We know it

1 because Mr. Havlik said it; and he is
2 supremely credible, supremely, for the
3 reasons that I've expressed to you.
4 Supremely. We know it because Dr. Laird
5 says it. Mr. Dagenhart says it. And even
6 Turek doesn't really dispute it.

7 So why all of the fascination -- why
8 all of the fascination with the unfailed
9 side of the failed splice? Remember, it
10 didn't fail. Why have we spent three-plus
11 weeks talking about it? Why? Because
12 they have nothing else to talk about, and
13 they're trying to stir up a controversy
14 and make something up to take your eye off
15 the ball of this case.

16 It wasn't that side that failed. Oh,
17 by the way, if that side was wire brushed,
18 the unfailed side, maybe that's why it
19 didn't fail. Right? I mean, after all,
20 you have a piece of weathered 47-year-old
21 conductor in the same splice, right, on
22 both sides. Fails on one and not on the
23 other. In fact, it hadn't overheated on
24 the nonfailed side, although it had
25 overheated in the mid-span splice.

1 Remember that? We'll come back to that in
2 just a minute.

3 But isn't it pretty good evidence that
4 it wasn't wire brushed on the failed side,
5 that on the unfailed side nothing bad was
6 going on, if that side was wire brushed?

7 Now, was that side wire brushed? I
8 don't know. I don't know. If you made me
9 decide, if you put me in the box -- you
10 know, I'm actually not allowed to tell you
11 what I would say, because I can't give you
12 my personal opinion. But I'll put it this
13 way, and this I can say: I think the
14 weight of the evidence, the weight of the
15 evidence supports it was probably wire
16 brushed, at least part of it was.

17 There is a lot of uncertainty about
18 that, to be fair about it. Havlik said it
19 wasn't when he first saw it the first few
20 times. At trial he said he wasn't sure.
21 He said if it was wire brushed, it
22 certainly wasn't adequate wire brushing.

23 Dagenhart said at first it was wire
24 brushed, then he said he's not so sure.
25 Laird said that he thought that the first

1 bit was wire brushed; in looking at it, a
2 bit more was wire brushed. Turek says the
3 first bit was wire brushed; the last bit
4 was not wire brushed.

5 Remember, it was in three pieces. And
6 the middle part, there were parts of it
7 that were wire brushed, particularly down
8 toward the center of it, down toward the
9 center of the splice. I don't know. Does
10 it really matter? Has this not been a
11 lengthy distraction from the side that
12 matters, which is the failed side? I
13 think it has been.

14 Now, let's say that you decide it's
15 important, which I think you shouldn't
16 waste your time on that; but if you
17 decide, that's okay. Let's say you decide
18 it was wire brushed. Then you're going to
19 have to decide: Why is that important in
20 the scheme of things?

21 Mr. Levicoff has said, "Well, if the
22 same guy did both sides, it would be
23 unusual for him to do one side and not the
24 other." That seems logical. Seems
25 logical. But likely doesn't mean did.

1 Likely means likely. If the unfailed side
2 was wire brushed and the failed side was
3 not, how did that happen? There are a lot
4 of possibilities of how that could have
5 happened.

6 How? Work is done up in the air. The
7 guy uses the wire brush on one side and
8 doesn't use it on the other. Forgets?
9 Drops it out of the bucket? Who knows
10 what?

11 The guy does one side on the bucket,
12 decides to come down to do something,
13 whatever, had to make a phone call. Just
14 remembered something. Maybe he got a
15 phone call on his cell phone. Who knows?
16 Maybe he had a call of nature. Who knows?
17 Goes back up, finishes the job, doesn't do
18 the other side.

19 Or the other guy goes up and finishes
20 the job and doesn't finish the other side.
21 The other guy thinks the other side was
22 done by the first guy and does the other
23 side. Or it was two done on the ground.
24 Or instead of starting in the front and
25 going to the rear, they started in the

1 rear and went to the front. Or it was a
2 remnant of what had been done 47 years ago
3 or some years ago.

4 And, actually, there is some support
5 for the idea it was a remnant. Because
6 the wire brushing, if it's there, is more
7 toward the center and not out toward the
8 end; which suggests that if it was wire
9 brushed, it wasn't a thorough job, at
10 least not down the whole way.

11 So maybe the guy before had wire
12 brushed like this (indicating); and then
13 these men, when they redid it in 2004,
14 they clipped the end. They used the old
15 portion, and they put it in. That's
16 certainly a plausible scenario.

17 I've given you I don't know how many
18 potential scenarios. They're all
19 unlikely. I don't mind telling you.
20 They're all unlikely. But if you add up
21 the chances that each one of those
22 occurred, 10 percent it was this, 12
23 percent it was that, 4 percent it was
24 this, you know, 10 percent it was
25 something identified here, you get to over

1 50 percent.

2 Basically, I don't know. But I also
3 want to tell you that this case can't
4 possibly rise or fall on that question,
5 respectfully. I mean this with the
6 greatest respect to you. It would not be
7 in keeping with your oath as jurors to
8 say, "We can't decide what happened on the
9 nonfailed side of the failed splice, and
10 we're not going to decide the issues in
11 this case favorable the Plaintiff."

12 Please. Carrie Goretzka was not
13 killed by the nonfailed side of the failed
14 splice. She was killed by the failed side
15 of the failed splice. That's where the
16 focus ought to be.

17 Now, did you notice with
18 Mr. Levicoff's two hour and 42 minute
19 narration, there was not a moment, not
20 even a moment of discussion about the
21 other two splices that were installed by
22 Jones and/or Falo on that very same day,
23 June 23, 2004?

24 And I know you know why. Because
25 you've been paying attention. It's

1 because his man, Turek, the day before had
2 said, "Yeah, those were improperly
3 prepared. Those were not cleaned with a
4 wire brush." All four of those
5 connections, he says that they were
6 cleaned maybe with something else; back of
7 a knife, pair of pliers, something else.

8 They were not cleaned with a wire
9 brush. The men did not follow the
10 instructions of the company. They did not
11 follow the instructions of Hubbell. I
12 mean, the thing is sitting there right in
13 front of their faces. "Wire brush." They
14 actually have to open the package. How
15 can this be anything other than willful
16 ignorance of your instructions?

17 You can't very well say, "I didn't
18 know what I was supposed to do" when it's
19 staring you in the face on the package.
20 Staring you in the face. And in the Bible
21 right there (indicating). By the way, I
22 don't expect these men to memorize this
23 thing. I'm going to come back to why we
24 shouldn't expect them to memorize this.

25 Okay. Please, let's talk this through

1 together for a minute, if we could. We
2 know to an absolute moral certainty that
3 those four of the splice connections, the
4 two in the center span and two in the rear
5 span, were improperly installed. We know
6 that because Mr. Turek says that they were
7 not wire brushed.

8 We know it because Dr. Laird says they
9 weren't brushed at all with anything.
10 They weren't cleaned at all with anything.
11 We know they did not follow their
12 instructions on that. Now, we know that
13 to an absolute uncontroverted, admitted
14 moral certainty.

15 What does it tell you, ladies and
16 gentlemen of the jury, about the
17 likelihood that if those four in the
18 back -- I shouldn't say "if." What is the
19 likelihood that since those four in the
20 back were improperly installed, improperly
21 installed, that this one here was properly
22 installed (indicating)?

23 I mean, if you're unsure about the
24 unfailed side of the failed splice --
25 because there is a lot of doubt about

1 that. So let's just put that aside for a
2 second. Let's talk about the five
3 remaining connections, the failed side of
4 the failed splice and both ends of the
5 center span splice and the rear side
6 splice. Five connections. We know the
7 other four were wrong. We know that.
8 It's not in dispute. What does that tell
9 you about the chances that the fifth was
10 done correctly?

11 And did you notice that there wasn't a
12 word from Mr. Turek on -- hey, Mike,
13 P006821. There wasn't a word from him on
14 this (indicating). Now, you remember
15 this. Maybe I'll do it like this. I
16 think you can all see this.

17 Remember we had this discussion? This
18 is from the north splice out by the back
19 pole, the south side. The installation
20 job was so sloppy there that one of the
21 strands actually didn't make it within the
22 jaws. Can you imagine how sloppy that
23 was?

24 And that wasn't denied by the
25 Defendants. Mr. Turek didn't even touch

1 this in his examination, and he was on
2 direct examination for a day and a half.
3 I was criticized for my two-hour cross.
4 He was on direct for a day and a half, and
5 he never dealt with this.

6 So we know that these men were very
7 sloppy on that day. We know that they
8 misinstalled that piece. We know that
9 they did not use a wire brush on either of
10 those splices. We know that they didn't
11 use a wire brush on the failed side of the
12 failed splice. We know that they gave --
13 Mike, you can take it down.

14 We know that they gave two different
15 stories on why that line came down in the
16 first place. We don't know if it was
17 Jones or Falo. We know it was Falo for
18 one of them but not for the other. We
19 just don't know. But we know they gave
20 one story, that a tree fell into the line,
21 causing it to fall. And we know they gave
22 another story, that the line and a tree
23 rubbed together, causing the line to fall.

24 Complete diametrically opposed
25 explanations. And that's more good

1 evidence of doing a sloppy job. We know
2 they have no records of anything that they
3 did that day, aside from billing two hours
4 for the job. They don't keep any records.
5 They don't keep a record of who does what
6 on the line. They don't keep a checklist.
7 "Do wire brushing. It's awfully important
8 to do wire brushing."

9 I know they're not airline pilots or
10 operating room nurses, but what they do is
11 just as important. Hasn't this case
12 proven this? It's just as important. If
13 it's an operating room nurse, she's going
14 to check off she has all the sponges
15 before the patient comes out of the
16 operating room.

17 Before the plane takes off, there is a
18 checklist in the cockpit. You've done
19 what you're supposed to do. They don't do
20 any of these things. It's like, "What is
21 the big deal? The thing is going to fall.
22 We'll go and pick it up." It's going to
23 fall energized, and it's going to kill
24 somebody.

25 Why else do we know -- oh, I meant to

1 say: Did you hear that discussion with
2 Mr. Levicoff yesterday? He's proven to a
3 certainty, through juxtaposing the
4 documents of truck assignments, that Jones
5 and Falo were in their usual truck that
6 day.

7 Remember, I had a discussion with Falo
8 about how he had actually used five
9 different trucks in that one-month period.
10 But Mr. Levicoff, I have to hand it to
11 him. He did prove that they were in the
12 truck that they usually used on the day of
13 this installation on June 23, 2004.

14 But I don't think he realized that he
15 was proving too much for his case that
16 day. He was proving too much because,
17 "Well, wait a second. You were in your
18 own truck, but you didn't wire brush the
19 installation of the splices on the
20 mid-span and the back span. How could
21 that be? I guess you commonly didn't wire
22 brush. Or I guess you commonly didn't
23 carry a wire brush on your truck, because
24 you were in your regular truck that day."

25 I mean, it would actually be better

1 for these folks on the claim of
2 recklessness if they would come in and
3 say, "You know what? Yeah, we didn't use
4 a wire brush that day, but here's why. We
5 weren't in our own truck. And the other
6 guys didn't have a wire brush on the
7 truck, and we didn't know it when we set
8 out."

9 But by proving to you -- I think I'm
10 satisfied that they've proven it, that
11 they were in their own truck. And now we
12 know they didn't wire brush these spans.
13 What does that tell you about their
14 customary behavior?

15 And with all due respect to them, it's
16 disconcerting -- I'll just put it that
17 way -- that they would take the witness
18 stand and Falo would tell you, "I always
19 wire brush," after all that evidence.

20 I mean, Mr. Levicoff, he knows --
21 Mr. Levicoff knows what his expert report
22 says about the failure to wire brush those
23 other two spans. West Penn knows what
24 their position is on this, that they were
25 not wire brushed. Yet their man takes the

1 witness stand and says, "I always wire
2 brush." That's distressing.

3 Remember how everybody comes here, and
4 Ray makes them swear and take an oath? I
5 mean, that's a serious matter. That oath
6 is a serious matter. And it is
7 distressing that they would come in here
8 in court and tell you, through an expert,
9 that these men didn't wire brush those
10 spans, yet let him take the stand and say
11 he always wire brushes without fail.

12 But then, of course, he undermines the
13 whole credibility of what he says when he
14 says, "Yeah, but I wouldn't say anything
15 to my partner if he didn't wire brush."
16 What does that tell you? "Yeah, I know
17 it's really important to do it, because a
18 line will fall and kill somebody if it's
19 not wire brushed; but if my partner didn't
20 wire brush, I wouldn't say anything."

21 How else do we know they didn't wire
22 brush? They were trained not to wire
23 brush. It's so distressing. Schellhaus
24 and Rhodes, their trainers, came in and
25 said, "Yes, we train the men that you use

1 pliers, the back of the knife, whatever,
2 to clean the conductor.

3 Mr. Levicoff, by the way -- maybe it's
4 because he doesn't use notes. I don't
5 know the reasons why exactly. But he got
6 up here yesterday and told you the precise
7 opposite. He told you that the trainer
8 said they talked about wire brushing. You
9 were here. You know what they said. They
10 said the opposite.

11 Oh, I had that fight with Mr. Rhodes
12 whether he was really a trainer. Oh, my
13 God. I mean, unbelievable. We put up on
14 the screen the interrogatory answers that
15 they swore he was a trainer. He said in
16 deposition he was a trainer. "No, I
17 didn't train, although I don't believe you
18 use a wire brush."

19 So the trainers, the people they
20 identify as their trainers say you don't
21 need to use a wire brush.

22 Now, I'm going to come back to this,
23 but this is a good point for me to say:
24 Is it incumbent on the company to know
25 what the trainers are telling the men? I

1 mean, gee whiz, you know, Ms. D'Angelo and
2 the others who were involved with
3 standards here, I mean, put these things
4 in these gigantic books (indicating), but
5 that's not -- that's just not the way the
6 world works. Don't we all know that?
7 Nobody is going to memorize the book.

8 You got to know what is being said.
9 You got to go down there and find out.
10 Oh, you don't have to go yourself. You
11 can send somebody. What are we telling
12 our people? I mean, the lineman's job,
13 respectfully, it's not that complicated.
14 The steps in putting up a line, you saw
15 them. They're not that complicated.

16 Are we doing it right? This thing has
17 gone on for decades. And they've been
18 doing it wrong decade after decade, even
19 after we filed this lawsuit. And they
20 know what happened here. They know it.
21 And these men come in; and they say, "We
22 still do it this way. I still think it's
23 okay not to wire brush."

24 Next, how do we know that they didn't
25 wire brush? How else, if this weren't

1 enough? If this weren't enough? We know
2 because they were having an epidemic at
3 West Penn Power of falling splices. An
4 epidemic. It went back before the year
5 2000.

6 She updates the standards. I commend
7 her for what she wrote here in the book,
8 but that's no substitute. Putting it in a
9 book is no substitute for being sure that
10 it's been communicated and being followed.

11 Mr. Levicoff made a slip yesterday
12 where he said, "She sent it out to whoever
13 they send it out to." Remember that
14 yesterday? It was a long speech, and we
15 have to forgive him for an occasional
16 slip. But that really was the attitude at
17 West Penn, "It goes to whoever it goes
18 to."

19 Excuse me. It's too important.
20 Everybody who testified, right -- there
21 were a dozen or more West Penn employees.
22 Everybody admits. Yes, this is really
23 important stuff. You have to know that
24 the wire brushing is done. These oxides
25 build up. They cause arcing. They cause

1 burning. They cause melting. They cause
2 the splice to come down. Somebody can be
3 killed. We know it. It's really
4 dangerous.

5 Mr. Jones says, "Yeah, if I had ever
6 heard that there were splice failures at
7 West Penn Power, I would have never
8 forgotten that. I would have never
9 forgotten. That would be the kind of
10 thing that would stick in my mind."
11 Remember, he told us that. He told us
12 that because he knows how incredibly
13 dangerous that could be.

14 Now, I know it's embarrassing. It's
15 embarrassing for the men when they hear
16 that other men are not cleaning the wires
17 and wires are falling. It's embarrassing.
18 Let's be honest about it. Embarrassment
19 is no comparison to the harm that comes
20 from not getting the word out and having
21 splices fall.

22 I mean, look, we had some discussion
23 about the Ford Motor Company here before.
24 You know, the Ford Motor Company, they
25 manufacture automobiles. If they have a

1 problem with their automobile, they have
2 to recall the product. Do you think they
3 want to recall their products? You think
4 anybody wants to recall a product? Don't
5 you think it's incredibly embarrassing to
6 recall a product? It's the last thing a
7 company wants to do.

8 So why do they do it? Because they
9 have to for the safety of their customers
10 and everybody on the roadway. Why?
11 Because operating a motor vehicle, it's a
12 dangerous instrumentality. Not as
13 dangerous as high-voltage transmission of
14 electric power, but it's really dangerous.
15 So if things are unsafe on the car, you
16 have to recall it, even though it's
17 embarrassing.

18 The same thing is true about the
19 epidemic of splices falling. You got to
20 bring the men in. You got to tell them
21 this is unacceptable. You got to suspend
22 some people, maybe fire people. I mean,
23 these men, Jones and Falo, regrettably,
24 are responsible for the death of Carrie
25 Goretzka. They're not alone. They're

1 mostly to blame, because they weren't told
2 important things that they should have
3 been told. They weren't told this is
4 serious business.

5 "This is serious business, and we're
6 having splices fall, and heads are going
7 to roll here because people could be
8 killed." You know that speech. You've
9 heard that speech. Maybe you've given
10 that speech. Maybe to your kids. Maybe
11 to somebody who works for you. Maybe that
12 speech has been given to you in your
13 lifetime. That's a speech that had to be
14 given. It was never given. It wasn't
15 even given after this happened. That's
16 disgraceful.

17 And what was this epidemic?
18 Mr. Levicoff likes to show you a couple of
19 E-mails where nothing directly having to
20 do with the issue here is involved, but he
21 wants to focus on some of the collaterals.

22 I'm sure that Miss D'Angelo sent out
23 lots of good E-mails. I'm sure that in
24 lots of other respects she is a fine
25 electrical engineer at West Penn Power.

1 There are undoubtedly thousands of fine
2 employees of West Penn Power, and I'm sure
3 in many respects they do a good job. This
4 case is not an indictment of West Penn
5 Power in any respect other than this issue
6 of automatic aluminum splices, but it is a
7 lawsuit over that.

8 We need to spend a moment on this.
9 This is relevant to you both on the issue
10 of how this line fell, but it's also
11 relevant on the issue of whether the
12 conduct here was reckless.

13 Now, you're going to be asked to
14 decide "Was the conduct of West Penn Power
15 outrageous?" That's going to be a
16 question you're going to have to answer.

17 Outrageousness in the law is the same
18 thing as recklessness. The judge will
19 tell you that. I'm going to use the word
20 "recklessness" because I think it's an
21 easier word to work with.

22 So I want you to think about this for
23 both aspects. Number one, whether they
24 were having a real problem with splice
25 failures; number two, whether the conduct

1 was reckless.

2 I'm going to skip over some of the
3 E-mails, because you've seen them. You've
4 heard about them. I'm just going to
5 remind you that we had some issues before
6 2000. I'm going to remind you that
7 because of the issues they strengthened
8 the language in the book, although it was
9 not absorbed by anybody. No witness
10 testified that they were even aware of the
11 change in the language in the book.

12 Then we had the problem with Frank
13 Gogol and the three overheated splices
14 that appeared on his desk. I'm going to
15 say something about that. That is more
16 evidence of indifference. Just
17 indifference to this issue.

18 I mean, here are overheated splices.
19 We know that that means the line either
20 did fall energized or it could have fallen
21 energized. We don't know that because
22 nobody even says. How can you run a
23 company with things this important and
24 there not be a process under which you
25 would bring in a defective product? I'm

1 not saying manufactured, but defect in
2 terms of what happened. If you were
3 running this company, would you accept
4 that? You would say, "I want a manhunt on
5 where these things came from. I want the
6 word to go. I want person to person. I'm
7 not talking about a memo in the back of a
8 book nobody ever reads. I'm talking about
9 a real conversation. If you have an issue
10 with conductors getting hot and splices
11 failing and the like, tell us. Tell us.
12 This is important. Bring them in. We're
13 going to look at them."

14 They show up on his desk. What's that
15 about? Was it somebody blowing the
16 whistle anonymously? It might have been.
17 Who knows? But it really shows a lack of
18 structure within the company to deal with
19 stuff like this. So they show up. Now
20 there is three of them, and that's an
21 issue. Word got to go out. Do we have
22 other ones? Word doesn't go out.

23 Then we go to WPP004090. This was
24 that E-mail that was discussed yesterday.
25 Mr. Levicoff wants this to be all about

1 copper. Copper was primarily the topic of
2 this E-mail, but it was also on the
3 subject of overheating splices in general.
4 And this was the brand new splice. It was
5 manufactured in 2003, and it had failed by
6 2004.

7 And she tells the fellow who is the
8 boss of the men "The importance of
9 thoroughly cleaning the conductor prior to
10 installation of an automatic splice or
11 other conductor cannot be overstressed."
12 It can't be overstressed.

13 She says down here that, "The sample
14 indicates that somebody ran a knife across
15 the conductor once or twice to clean it,
16 but that's not enough to remove the
17 oxidation." She says, "Based on our
18 experience, this is what causes failures."
19 Right?

20 What does she know now? She knows
21 sending out this thing, the book, it's not
22 sufficient. It hasn't gotten the word
23 out. She needs to do more than what she
24 said. It's not enough to tell that one
25 guy. You got to get the word out. There

1 have to be consequences.

2 They suspend linemen for engaging in
3 unsafe activities for themselves. How
4 about suspending a linemen for engaging in
5 unsafe activity for the public? Where is
6 that? So you can take that down now.

7 They then send another splice to
8 Hubbell. Those liars at Hubbell; right?
9 WPP3717. "This appears to be a burn/melt
10 due to increased resistance at the jaw to
11 conductor interface. Poor conductor
12 cleaning probably started the problem by
13 causing the splice to run hot."

14 Mr. Levicoff says it was unreliable,
15 based on photographs. That is such a
16 laugh. How many times have you seen
17 photographs in the last three weeks which
18 the experts on both sides tell you can
19 form the basis of deciding what happened?
20 A zillion times. Yet he wants to say that
21 Hubbell didn't have enough information.

22 Well, if West Penn didn't think that
23 photographs were enough information for
24 Hubbell, why would they only send
25 photographs? Why would their lawyers only

1 rely upon photographs in the courtroom for
2 a lot of what they've done? Photographs
3 were apparently sufficient.

4 Certainly, Miss D'Angelo thought they
5 were sufficient. She didn't say, "Oh,
6 this must be wrong because it's only
7 photographs." She relied upon this and
8 held it as being true.

9 Now, this was just two months after
10 that February E-mail that I just showed
11 you. I forgot something about the
12 February E-mail. Do you remember how this
13 came into this case? It came into the
14 case through an overnight roam-through of
15 E-mails by Jill D'Angelo. She said there
16 was an E-mail that she thought she sent
17 out companywide to everybody concerned
18 with conductors about the importance of
19 splice cleaning.

20 Now, that would have been, in my
21 opinion, a very good piece of evidence for
22 them to bring in to show that they really
23 were not indifferent to these issues. And
24 I said to her -- you were here. I said,
25 "Well, where is that E-mail?" "Well, you

1 know, it's in the system." "Would you
2 come back in tomorrow morning and show it
3 to us?"

4 So the next morning comes. "Did you
5 find the E-mail?" "No. I couldn't find
6 the E-mail. I guess it was never sent."
7 Now, I want to say a couple things to you
8 about that. Number one, that's kind of
9 dirty pool, respectfully, for a witness to
10 say, "I'm sure I sent an E-mail way back
11 when telling people how important it was
12 to have proper splice preparation,"
13 because the lawyer might not say, "Well,
14 go look for the E-mail." Right? Not
15 every lawyer is going to ask that
16 question.

17 But I did. You might say I called her
18 bluff. Put up. And it's not there. Now,
19 that's bad. That's bad. You shouldn't
20 tell the jury that you think you sent
21 something. You know this is your one
22 appearance in court; and then when you're
23 put to it, it's not there. Okay. Maybe
24 it was an honest mistake.

25 But let's be fair about it. When I

1 said to her, "Does that mean it probably
2 wasn't sent," she said, "Yeah, that means
3 it probably wasn't sent." That's very
4 bad, because she's admitting she could
5 have sent out that word; and she didn't.
6 And that's very bad.

7 And then we have her appear with this
8 E-mail where in February of 2004 she says
9 that here was a brand new splice, only a
10 year old, and it had failed because it had
11 not been properly cleaned. It had been
12 cleaned with pliers or a knife, back of
13 the knife, not with wire brushing. And
14 that was not given to us during discovery.
15 It was only given to us the morning she
16 came back in here.

17 And I said to her, "Shouldn't this
18 have been given to us a long time ago?"
19 "Yeah." "What was the response of the
20 fellow to whom you sent this? Did he
21 respond?" "Yeah, he responded."

22 Well, we don't have that response.
23 His Honor orders the response to be given.
24 It gets handed across to him by
25 Mr. Levicoff.

1 MR. LEVICOFF: Your Honor, may we see
2 the Court at sidebar?

3 THE COURT: Yes.

4 (Sidebar discussion held as follows.)

5 MR. LEVICOFF: Number one, counsel
6 just told the jury the response to this
7 E-mail wasn't provided to them. It
8 absolutely was, and I'm fairly sure it's
9 in evidence. But they absolutely have it.

10 Secondly, he just got confused in what
11 E-mails couldn't be found. The E-mail
12 that he described to the jury, that he
13 told the jury couldn't be found, was the
14 one he was holding in his hand as he made
15 that statement to the jury.

16 The E-mail that couldn't be found is a
17 different E-mail. The E-mail that
18 couldn't be found is an E-mail that
19 forwarded the 2002 standard revision. We
20 just went through that yesterday when we
21 corrected the charge.

22 I'm prepared to show it to the Court
23 after closing statements, but I am placing
24 on the record now an objection to both of
25 those remarks. And I am asking the Court

1 to make a study of the record and give a
2 curative instruction at the appropriate
3 time, whether it's now or whether it's in
4 the charge or at some other point. But
5 those were two blatant false statements
6 that were just made to the jury.

7 MR. SPECTER: First of all,
8 Mr. Levicoff is badly mistaken.
9 Everything I have said is correct. The
10 E-mail that I'm talking about just now was
11 not produced during discovery. It was
12 produced overnight, just as I said it was.

13 Number two, the E-mail that she says
14 she sent out for everybody concerned with
15 conductors, when she searched for that
16 overnight, it couldn't be found.

17 The reply to this E-mail, the one I
18 just referenced in February of 2004, it
19 was requested by me. Your Honor ordered
20 it to be turned over. Mr. Levicoff handed
21 it across to me during the court
22 proceeding.

23 In any event, I've had the same issues
24 with things he said; and Your Honor has
25 said the jury recollection of these things

1 controls.

2 THE COURT: I'm going to note your
3 objection. I'm not going to review any
4 more documents. I'm going to tell them,
5 after the close of Mr. Specter's remarks,
6 that these are speeches. They're not
7 evidence. And that any recollection of
8 the facts, you should rely on your own.

9 MR. LEVICOFF: I would ask the Court
10 to make that instruction right now. You
11 did it during my closing argument. I
12 think it's appropriate to make the same
13 remark right now.

14 MR. SPECTER: You said during his
15 closing that their recollection controls.
16 That's fine. Not the rest of it. I have
17 no objection to your saying their
18 recollection controls.

19 MR. LEVICOFF: Right now.

20 THE COURT: At the end of this I am
21 going to remind them about these speeches.

22 MR. SPECTER: That's fine.

23 (Sidebar discussion concluded.)

24 THE COURT: Ladies and gentlemen of
25 the jury -- Mr. Specter, would you stand

1 back.

2 MR. SPECTER: Yes, Your Honor. Excuse
3 me.

4 THE COURT: During the course of
5 either of these closings, which are
6 significantly long -- and understandably
7 so. Because of this case, these men have
8 to do what they're doing. If they
9 represent a fact, "The ceiling is blue or
10 it is white," fine, they can say that.
11 But it's your understanding of what the
12 color of the ceiling is that controls.
13 Okay? That's what I want you to
14 understand. All right? We'll resume.

15 Mr. Specter.

16 MR. SPECTER: Thank you.

17 Now, going back to this, so she says
18 that there should have been an E-mail sent
19 out to all these folks. She looks. She
20 can't find it. It should have gone. It
21 didn't go. That was bad.

22 She then produces this overnight,
23 which she says it should have been
24 produced earlier. We discussed that.
25 This was particularly important, because

1 it showed a new conductor, newly
2 installed, that failed because of absence
3 of wire brushing.

4 If there were ever a need for proof
5 positive of the importance of wire
6 brushing, this is it. Here is a nice,
7 clean conductor that falls after one year
8 because it was improperly cleaned. So you
9 want to talk about NEETRAC, NEETRAC,
10 Hubbell, films, this, that, here is proof
11 positive. I know we don't make judgments
12 in our lives over one incident occurring,
13 but this is very strong evidence of the
14 importance of wire brushing.

15 So that's February. Then we have this
16 thing here in April. Then we have the
17 exchange the same day between
18 Miss D'Angelo and her boss, Haven Bearley,
19 WPP003903.

20 Can you blow up, Mike, the Jill --
21 toward the top. It's just ahead of
22 standards. You want to talk about
23 recklessly indifferent? Here it is. Here
24 it is. This isn't the only reckless
25 indifference, folks, but here it is, a

1 good explanation. "The majority of our
2 automatic splice failures had been
3 attributed to poor conductor preparation
4 and improper splice installation." Here
5 is Haven Bearley saying, "We have a
6 problem here."

7 God knows how many of these things
8 there had been. They're not even keeping
9 a log of them. They're not even keeping a
10 running record. They don't have reports
11 on how many they have. They're so
12 indifferent at the company, it doesn't
13 even rise to that level. But they know
14 that they have a bunch of them because
15 Bearley refers to it as "the majority."
16 And he knows that the men aren't doing the
17 proper job.

18 Poor conductor preparation. That
19 means not wire brushing. And improper
20 application. So what is his solution to
21 this problem that every single witness
22 says is a danger to everybody who might be
23 within falling distance of a power line in
24 Western Pennsylvania?

25 What is the solution? Does he say,

1 "Let's get quality assurance involved"?
2 They don't even have quality assurance at
3 West Penn Power. "Let's get the
4 department of safety involved"? They
5 don't have a department of safety at West
6 Penn Power.

7 "Let's get discipline involved. Let's
8 figure out who is doing the wrong thing
9 and get the word out and have men
10 suspended"? No. "Let's get in front of
11 the men and tell them"? No. "Let's get
12 E-mails out"? No.

13 "Do we have a film shown at the
14 training schools?" Excuse me. The
15 training schools are when you're starting
16 out. That's when you start out in the
17 business of being a lineman. I think 1977
18 for one of the fellows and 1995 for the
19 other.

20 You don't see the film again. I asked
21 them both, "Did you ever see a film
22 again?" No. Saw it one time. And,
23 really, sitting the guy down and saying,
24 "Watch this film," would that even -- if
25 that's what she had did, would it be

1 enough? It isn't even what he said to do.
2 He just asked, "Do we show a film in the
3 training schools?" That's, obviously --
4 by the way, if they do, it's not working,
5 because the lines are falling.

6 And Jill D'Angelo, I mean, she knows
7 better, because two months earlier she had
8 said, "The importance of thoroughly
9 cleaning the conductor prior to
10 installation of an automatic splice or
11 other conductor cannot be overstressed."
12 It cannot be overstressed. She sounds
13 like me today. If it cannot be
14 overstressed, then why wasn't it stressed?

15 Why do we leave it to, "Let's just see
16 if in training schools they have a film"?
17 Okay. Take that down.

18 No quality assurance. No discussion
19 on retraining. No evidence-gathering. No
20 analysis. No discipline of the men. No
21 discussion of infrared. "We have a
22 problem. Let's get infrared involved."
23 All those things, nothing.

24 Then we come to June, and the line
25 falls in Mr. Goretzka's yard. June 23.

1 And he's worried. Now, by the way, I
2 don't know if you did the math on this.
3 Maybe one of you did. But that line fell
4 very close to the birth of their first
5 child. Do the math.

6 He had some other things that he was
7 thinking about on those days, too. He had
8 a new baby in the house. But he still
9 gets on the phone, and he calls. Bring up
10 P005684. We probably want to start with
11 5682. He gets this letter from
12 Mr. Hartung. Can you blow up the text of
13 it?

14 Man, there are a whole bunch of
15 smoking guns in this case, but this is one
16 of the big ones. I mean, here you got the
17 guy in claims. He says that "We don't
18 know why the line came down." That's a
19 disgrace all by itself.

20 They don't gather up the failed
21 splices, if they failed. I'll show you
22 why we know that. Doesn't gather up the
23 conductor. Doesn't take it over to
24 standards. Doesn't even drop it
25 anonymously like an orphan on Frank

1 Gogol's desk. It came down. Yeah, it
2 burned up the lawn. No big deal. It's a
3 beautiful lawn they have. But burned up
4 the lawn. But we know it wasn't a tree.
5 We just don't know why it came down. But
6 the phase burned down. What burned down
7 is the outside phase. It burned down.

8 That's exactly what Mr. Turek told us
9 on Tuesday happened to the connector in
10 2009, failed side/failed splice. It
11 burned down. Just what Dr. Laird said
12 happened to the failed side of the failed
13 splice. It burned down. It's what Chris
14 Havlik said happened to the failed side of
15 the failed splice. It burned down. What
16 Johnny Dagenhart said, on the failed side
17 of the failed splice. It burned down.

18 How many other burn-downs were there
19 at West Penn Power that we just don't know
20 about because these things were swept into
21 the trash can? We have these fragments,
22 these E-mails. We know enough to know
23 there was an epidemic.

24 They didn't even keep an account, a
25 record, an investigation. It was just

1 indifference. And you might say, "Well,
2 indifference, I mean, is that really
3 recklessness? You know, what is
4 recklessness?"

5 If Mr. Levicoff is driving down Fifth
6 Avenue -- we were talking about this the
7 other day -- and he's fiddling with the
8 radio controls on the car and so he's
9 momentarily distracted. He gets into an
10 accident, and somebody is hurt. Was he
11 negligent? Yes. Should there be
12 compensation for what happened? Yes. Is
13 that recklessness? No.

14 Should he have damages to punish
15 imposed on him because he was fiddling
16 with the radio for a moment and was
17 momentarily distracted? No. It's not
18 recklessness. It's bad, but not that bad.

19 But if Mr. Levicoff decides he's going
20 to close his eyes driving down Fifth
21 Avenue and he hits somebody, damages to
22 compensate? Yeah. Damages to punish?
23 Yeah. He could be heard to say, "Well, I
24 closed my eyes, but it doesn't mean I was
25 going to hit somebody. There could have

1 been nobody on Fifth Avenue." No. That's
2 reckless, because you know there is a
3 significant risk of somebody being killed
4 or injured by what you're doing, and you
5 know that what you're doing is dangerous.

6 That's what we have here. They're not
7 doing anything to solve this problem.
8 They know it's dangerous. You notice I
9 asked every single one of them not "What
10 do you think now?" "What did you think
11 then? Did you know then that this issue
12 would be dangerous?" "Yes, I knew the
13 danger of a falling power line, what that
14 could mean."

15 "Did you know it was very important
16 you gather physical evidence to look at
17 it?" "Yes." All of them said that. But
18 they just don't do it. They don't do it
19 even here when it falls on Mr. Goretzka's
20 property.

21 And then he says, "I talked to the
22 engineer, and the reason the line did not
23 de-energize was due to the fact there
24 wasn't enough fault current to trip the
25 fuse." So, obviously, there was some

1 problem with the fusing grid system there.

2 And did they go out and solve that?

3 No. Among the many broken promises from
4 Mr. Levicoff was the promise to bring in
5 Mr. Elliott. I forget his first name. He
6 touted Mr. Elliott in his opening as the
7 guy that came out in 2009 to look at the
8 grid. That, obviously, wasn't in response
9 to this in 2004. They never dealt with
10 this issue.

11 Again, it's just indifference. It's
12 reckless indifference, because they knew
13 that line fell. And if it had fallen, it
14 could have killed somebody in the yard. I
15 just had this. (Pause.) I wanted to show
16 you something.

17 I just want to show you this.
18 WPP000306. This was a picture taken in
19 the yard the day of the incident. And I
20 don't know if anybody focused on this.
21 But do you see that pink Cadillac? I
22 mean, what else do I have to say? I mean,
23 seriously. Those kids were out there in
24 that side yard that day, the day before,
25 in that pink Cadillac.

1 West Penn, they know they're stringing
2 lines through people's yards. They know
3 there is kids there. Okay. Take that
4 down.

5 So, anyway, getting back to this. So
6 in 2004 they know the thing burned down.
7 They don't do anything about it. They
8 know they got a problem with their fusing.
9 They don't do anything about it. They
10 sent him a letter. This is not the basis
11 for punitive damages, but it is
12 infuriating when you don't put a phone
13 number for the claims rep on there.

14 So you make a guy go through a
15 switchboard to get ahold of you. We've
16 had that from our credit card companies.
17 It's just not right.

18 Okay. So Mr. Goretzka, he calls the
19 same day he gets the letter, apparently.
20 He calls in to the call center. P005684.
21 He's unhappy. Blow up this section, Mike,
22 at the top. He's unhappy. It's not the
23 cost of the yard. It's the technical
24 jargon. And the line that came down not
25 only this year but the year before. Why

1 did that happen? And in the same place.
2 And he's having concerns for his family's
3 well-being. I mean, if this doesn't
4 justify the imposition of punitive
5 damages, what does? I mean, seriously.

6 By the way, on this thing about
7 punitive damages, Mr. Levicoff makes this
8 like it's all my fault that we have this
9 claim for punitive damages; right? In
10 order for the claim to be submitted for
11 punitive damages, the Court has to decide
12 the evidence is sufficient.

13 Now, let's get back to this. He's
14 calling in. This line is falling. It's
15 fallen twice. What do they do? They
16 don't do anything. I mean, this is
17 callous indifference. This is
18 Mr. Hartung, who is an experienced claims
19 guy. They are first responders to this
20 stuff. They see these things fall.

21 They see the aftermath, I should say.
22 They see the damage claims. Get the stuff
23 to Jill D'Angelo so they can figure out
24 what happened. It's like there is nobody
25 talking to anybody else at West Penn

1 Power. They just don't talk to each
2 other.

3 It would be okay if they were in the
4 business of manufacturing comic books. It
5 would be. Because nothing really that bad
6 could happen as a result. But that's not
7 what they do. So from the history of
8 problems at West Penn Power, we know that
9 is strong evidence of why this line fell
10 itself. It's just one more example of
11 this thing falling.

12 Okay. Why else is it clear? Quickly.
13 It's clear because of the literature.
14 There is not a lot, but there is enough.
15 When I say "literature," I mean what is
16 available in the field.

17 The Hubbell film. They want to trash
18 the Hubbell film, but the Hubbell film
19 says there is a 25 percent difference in
20 resistance between wire brushing and not
21 wire brushing.

22 Now, what is wrong with that as good
23 evidence that you ought to wire brush?
24 The NEEETRAC studies. They had one study
25 that was inconclusive because they had two

1 failures on each side. That is not
2 statistically significant. They ran a
3 bigger study, and they found that there
4 was a statistically significant difference
5 between wire brushing and not wire
6 brushing. That's good evidence.

7 The memo I showed you from Jill
8 D'Angelo where the wire failed after one
9 year when it was not wire brushed, that's
10 good evidence. The other wires that are
11 falling, that's good evidence. They say,
12 "Well, why isn't this some sort of
13 nationwide problem?" Actually, it is.

14 Mr. Levicoff admitted in one of his
15 questions that it was difficult nationally
16 to get people to clean conductor, to get
17 linemen to do it. If West Penn knew that,
18 why weren't they doing more to get it
19 done?

20 We know it from the fact that they had
21 so many instances themselves at their
22 company and weren't training their men
23 properly. We even had Mr. Havlik say,
24 "This is the only company I ever heard of
25 that trains its linemen that it's okay not

1 to use wire brushing."

2 Why else is it clear? It's clear
3 because there is no literature anywhere
4 that says you don't need to wire brush.
5 There is no -- it's not in the standards.
6 They haven't changed the standard, at
7 least not that we know of. We don't have
8 any evidence that Hubbell has changed,
9 that you don't need to wire brush.

10 It's only as a defense for this
11 courtroom that you don't need to wire
12 brush. And even this fellow they bring in
13 here, Mr. Turek, says, "I still think it's
14 prudent to wire brush."

15 Now, how could he say it's prudent to
16 wire brush? You know why? Because he
17 doesn't believe his own basement science
18 experiment about which we have very little
19 information. It wasn't filmed. Didn't
20 use the wire involved. Didn't want to
21 tell us. Didn't take any notes. Oh, I'm
22 sorry. He took notes, but he didn't bring
23 them with him.

24 Are you going to make this decision
25 based upon what Mr. Turek had to say?

1 Mr. Turek -- and he is a nice man. Don't
2 get me wrong. But let's be honest about
3 it. The guy was a sacrificial lamb.

4 I mean, when they have a problem at
5 West Penn Power with their lines, do they
6 go to Mr. Turek for an explanation? No.
7 They go to Hubbell. Hubbell told them,
8 "Your line failed because you didn't clean
9 the conductor."

10 So then they go out and find
11 O'Donnell, who is a real guy. He's a
12 highly-qualified guy. He's a Ph.D.
13 mechanical engineer. Is he going to show
14 his face in this courtroom to back up his
15 report, if he was really part of the
16 report? No. No. He's 12 miles away from
17 here. Don't you think, in a case like
18 this, you want to hear from the real guy,
19 not from a guy who tells you he's sorry
20 he's here?

21 By the way, was I rude to him? Okay.
22 Seriously. I know there was this whole
23 thing in the opening about how I was going
24 to beat up on people. I want to ask you
25 something. Was I rude to anybody? Did I

1 pry stuff out of people's mouths? Did I
2 beat people up?

3 What did I say to Jill D'Angelo? I
4 said, "You don't have to agree with me."
5 That was what I said, "You don't have to
6 agree with me." Why would a lawyer tell a
7 witness "You don't have to agree with me"?
8 That's being courteous to somebody.

9 That's "Hey, please understand I'm on
10 the other side of this case. I'm asking
11 you a question, but you don't have to
12 agree with what I'm saying." That's
13 courtesy.

14 If you feel like I was discourteous to
15 somebody, please don't hold it against
16 Mr. Goretzka, but please ask yourself:
17 Weren't the questions asked in a way that
18 were designed to get the truth and not to
19 be mean and not to embarrass people for
20 the sake of embarrassing people?

21 Anyway, Mr. Turek, he doesn't even
22 read the important stuff in the file.
23 "You can't read everything," he tells us.
24 Yeah, but how about reading the important
25 things? How about reading the deposition

1 of Mr. Havlik? How about reading the
2 expert report of Mr. Dagenhart? Etcetera,
3 etcetera.

4 Could you imagine what fun they would
5 have made of our case if I had brought in
6 Mr. Turek? I mean, seriously, can you
7 imagine that? They would have brought in
8 Dr. Laird; and they would have said, "We
9 have Dr. Laird on our side. We have
10 Mr. Havlik on our side. And they have a
11 guy who didn't read the stuff, doesn't
12 film his experiments, doesn't keep his
13 notes or doesn't bring them into court,
14 and who will put up the most preposterous
15 theory about this thing failed. It failed
16 because of wind, Aeolian wind." I mean,
17 that is junk science.

18 Can you imagine if a Plaintiff came
19 into court and says, "This line came down
20 because of wind, regular winds, just the
21 gentle breezes that flow in our
22 communities. And that's why there ought
23 to be compensation paid"? How long would
24 it take you to laugh the Plaintiff out of
25 court?

1 And wouldn't you think that's a kind
2 of lawsuit abuse that maybe I've heard
3 about on TV? Yeah. This has been lawsuit
4 abuse. It's they have abused the system
5 by bringing you a guy like that to make a
6 preposterous claim like that.

7 Very quickly. I'm done with the
8 splices. I just want to make a couple
9 other quick points on liability. No. 1,
10 even though the line fell and shouldn't
11 have fallen, Carrie's death could have
12 still be prevented. It could have been
13 prevented by the infrared. It could have
14 been prevented by proper fusing. It could
15 have been prevented by proper grounding.

16 First, on the issue of fusing, this
17 will take me 30 seconds and no more.
18 Mr. Dagenhart told you that the 100-T fuse
19 was too big and the smaller fuse like a
20 65-T should have been used. The smaller
21 fuse would have de-energized the line
22 before the resistance got so high that the
23 conductor was damaged and allowed a
24 burn-down. And the fuse should have blown
25 and de-energized the line when it hit the

1 phone line before Carrie was shocked. But
2 Carrie was shocked, and the line did not
3 de-energize.

4 And they did not bring in Mr. Elliot
5 to tell you that the 100-T fuse was the
6 right one and it did not de-energize on
7 the line because the line was not properly
8 grounded. And we showed you where the
9 ground points weren't and how they were
10 not there. And they claim "Well, it could
11 have been grounded somewhere else down the
12 line." Well, excuse me. Where is the
13 photograph that shows that they were
14 properly grounded? They didn't bring you
15 one.

16 Now, don't you think with all their
17 resources that if they could have proven
18 the line was properly grounded, they would
19 have done so? On the issue of grounding,
20 Mr. Levicoff said to you that if the phone
21 line was properly grounded, then when the
22 power line contacted, there would have
23 been fireworks from the arc that that
24 created; and the fuse would blow; and the
25 line would de-energize. Those things are

1 true.

2 But, number one, the line was not
3 properly grounded. So, therefore, it
4 would not blow. Second of all, we know
5 the line did not de-energize. We know
6 when it struck Carrie Goretzka, it was
7 energized; and it remained energized for
8 20 minutes until they got there and they
9 de-energized it.

10 They have this long debate, which is
11 meaningless, about Mike Thornburg,
12 meaningless. Completely meaningless. I'm
13 only going to raise it with you because it
14 was dwelt on so much by Mr. Levicoff. Let
15 me deal with it this way.

16 Mr. Thornburg is a highly credible
17 person. There is no question about it
18 from his demeanor. And he loved Carrie
19 Goretzka. Did he see a fireball? I don't
20 know. I mean, his statements to the state
21 police on the day of the incident said he
22 saw fire. He saw -- I forget what he said
23 exactly, but he didn't say he saw a
24 fireball. He later said he saw a
25 fireball. He seems to believe he saw a

1 fireball now. On the day he didn't think
2 he saw one.

3 Let's say he saw a fireball. It was
4 at the same time that he heard JoAnn
5 Goretzka scream for help. He wasn't sure
6 if just before or just after. Well,
7 that's kind of hard to reconcile,
8 candidly, because JoAnn Goretzka doesn't
9 report seeing a fireball at the time she
10 was screaming for help for her
11 daughter-in-law.

12 Don't you think she would have seen a
13 fireball if one had occurred? But maybe
14 she was too traumatized by what was
15 happening and doesn't remember seeing a
16 fireball. That's possible. But, again,
17 it's hard to reconcile what Mike Thornburg
18 says with the other evidence that we have.

19 But let's say he saw a fireball.
20 There was a fireball, and JoAnn didn't see
21 it. Again, it's possible. Seems
22 unlikely; but, okay, let's say that's what
23 happened. We have a clear explanation of
24 what happened.

25 Campbell Laird testified in court that

1 there was an explosion that would have
2 occurred when the power line came down and
3 struck Carrie on the arm exploding --
4 remember exploding? He said exploding
5 open the telephone. Look at all of the
6 burn on the telephone (indicating)?

7 You heard the testimony about all the
8 burn on Carrie Goretzka. She was
9 immediately on fire. I hate to say that,
10 but I have to. Immediately on fire.
11 Could that produce a fireball? Yeah.
12 Yeah. So why do we have a ten-minute
13 excursion into Mike Thornburg?

14 Infrared, briefly. Their defense of
15 infrared has shifted pretty substantially,
16 hasn't it? In the opening it was infrared
17 is useless. Then with Dagenhart it was
18 infrared is only used on transmission
19 lines, not distribution lines. Then it
20 was "Yeah. Okay. It is used on lines
21 like this one." Back at Duke Power back
22 in the early 1970s it was used, according
23 to Mr. Dagenhart, on lines just like this
24 one.

25 Now, it's receded to "Yeah. It's used

1 on lines like ours. We don't use it, but
2 we don't think it's likely to be
3 successful. It might not work." And I
4 want you to think about this for a second.
5 Because there is a chance it won't work.
6 But so what?

7 I mean, for those of us who are men
8 and we go to the doctor, and the doctor
9 asks us to submit to a rectal exam because
10 he's worried about prostate cancer, we
11 don't really want to do that. And it's
12 probably not going to be any prostate
13 cancer, but we do it because the
14 consequences are so bad for us if we don't
15 do the test. But it's not 100 percent
16 accurate.

17 And even that PSA that they do, it's
18 not 100 percent accurate, but we do it
19 because the chances of getting an early
20 diagnosis is so much more important for
21 us.

22 For you ladies -- again, I hate to
23 bring these topics up, but it's a fair
24 comparison. You know, you go for a Pap
25 smear. You go for a mammogram. Well

1 maybe it won't pick it up. And maybe if
2 it does pick it up, it won't be in time.
3 Maybe you've heard this controversy in the
4 news. The early diagnosis, how much
5 difference does it really make?

6 You know those controversies. Do you
7 not want to get the test for that reason?
8 Any of us? Of course, we want the tests.
9 Because we want -- the consequence of
10 being wrong is so terrible that it's worth
11 it for the 50 bucks for the test or
12 whatever they're charging us for it, even
13 if it is uncomfortable.

14 That's like the infrared. It wouldn't
15 catch all of them, but it will catch some
16 of them. It will save some lives.

17 Now, I want to spend a moment on the
18 scenario of what happened here. I want to
19 say to you that this is another disgrace
20 in this case. First of all, the evidence
21 is overwhelming that the incident happened
22 just the way that we said it did, that
23 this line fell.

24 It landed on the telephone lines. It
25 rested on there for a couple of minutes.

1 Long enough to take those 200 pair or
2 100 pair of copper wires and fuse them
3 together. That's going to take quite a
4 while. Remember Mr. Hindeman said he
5 could see the metal coming through the
6 outside when he went up there to repair
7 them. It's very disappointing, I'll put
8 it that way, that that evidence wasn't
9 preserved by West Penn Power. Very
10 disappointing. Very disappointing.

11 Now, Mr. Levicoff wants to deal with
12 the issue of how far up and how far down
13 the wire came down on the telephone wires.
14 Why does that matter? It doesn't make a
15 blessed bit of difference. It all
16 happened in the same area over Carrie
17 Goretzka.

18 Mr. Levicoff wants to criticize Carrie
19 Goretzka for not looking up. But we don't
20 commonly look up in our everyday
21 experience. It's just not something that
22 we do. Because we trust what is above us
23 is not going to kill us.

24 I did that little experiment with
25 Dr. Corrigan. "What color is the

1 ceiling?" She's a fancy biomechanical
2 engineer from MIT and Harvard. She
3 doesn't know. We don't commonly look up.
4 But she knew what color my tie was.

5 If that power line was dead ahead of
6 Carrie Goretzka, she would have seen it,
7 just like Dr. Corrigan could see what
8 color my tie was. Look at D33490. Of all
9 of the offensive things. Of all of the
10 offensive things that we've had in this
11 case, this has got to be the most
12 offensive.

13 The idea that Carrie Goretzka would
14 walk out there and walk into a downed
15 power line, it is a sacrilege to her
16 memory. And she's not here to defend
17 herself, but I am.

18 And this idea from Mr. Levicoff that
19 "I'm not blaming Carrie Goretzka" is bull.
20 West Penn Power has accused her of
21 contributory negligence. You have to
22 answer that question on the form, because
23 that is their affirmative defense. They
24 didn't have to make that claim. They
25 could have dropped that claim. That's

1 their claim. And it is deeply, deeply
2 offensive; and I represent the Goretzka
3 family in saying that.

4 Deeply offensive. In Mr. Levicoff's
5 opening statement he said to you
6 Mrs. Goretzka walked over and came into
7 contact with this wire. Mrs. Goretzka
8 walked over and came into contact with
9 this wire. This is what he was saying in
10 his opening is what happened. And that is
11 absolutely impossible.

12 And it's impossible for many reasons
13 that I could quickly describe. Number
14 one, it's the height of lunacy that an
15 adult would walk into a power line like
16 that. The height of lunacy.

17 Number two, she wasn't ever there. At
18 least not at any point in time relative to
19 the incident with the power line. Because
20 that's not where the physical evidence
21 was. Put up D033411. Tighten up on the
22 incident area, Mike. Tighten it up some
23 more. The physical evidence.

24 If you can look up at the screen, I'm
25 going to -- you can ask for the

1 photographs of this. The physical
2 evidence was in this area right here
3 (indicating). This is where she lay
4 (indicating). This is where her hair was
5 (indicating).

6 That's where the phone was
7 (indicating). That's where the comb out
8 of her hair was (indicating). That's
9 where it was. The shoes, which were
10 backward, right. We know she wasn't
11 standing there, because the shoes were
12 backward. They came off of her in the
13 sequence. Do we know exactly how? We
14 don't.

15 Do we know whether she saw the line at
16 the last second and put her arm up and
17 jumped away coming out of her shoes with
18 the line coming down on top of her? I
19 mean, all the physical evidence suggests
20 that that is certainly consistent with
21 what happened.

22 If she had her shoes on, they would
23 have been badly burned. They were
24 undamaged. They don't dispute that. They
25 will tell you "We certainly know she

1 wasn't standing there, because no human
2 being can stand that way."

3 They've chosen to place her there
4 because they know that if they placed her
5 here (indicating), she would be -- she
6 wouldn't be able to reach the line. You
7 see. Put back the last thing up there.

8 See, if they had placed her -- she
9 laid about halfway between those two
10 trees. The trees were, I think, 22 feet
11 apart. If she had been standing here
12 (indicating), she can't reach the line.

13 They have to put her in a place where
14 we know she wasn't, because this is where
15 she was (indicating). At least that's
16 where she ended up. They take the only
17 piece of physical evidence that's anywhere
18 near a point where she would be short
19 enough to be in contact with the line if
20 it came down.

21 Put up D033447. This was Mr. Smyda's
22 drawing. He said that she was adjacent to
23 the burn mark; right? That's where the
24 physical evidence was. That's where she
25 lay. Not down here (indicating). Up here

1 (indicating). Halfway between these two
2 trees. Way too far to be able to come in
3 contact with that line, if that line came
4 down the way they said it did, which it
5 didn't.

6 Because we also know the line came
7 down coiled. It wasn't straight. It came
8 down coiled to some degree. We know that
9 from many of the pictures. For example,
10 P08744. Right? It came down coiled. Put
11 back up D033458.

12 And, by the way, if this were really
13 where the line were -- and you remember
14 all the discussion about this -- there
15 would have been quite a bit more line
16 coming down on the ground, wouldn't there?
17 There was a lot of line that came down out
18 of this tree.

19 Remember the drawing that Mr. Smyda
20 did? P006034. Remember out of Tree
21 No. 4? All of this wire (indicating),
22 right. If that wire had come straight
23 down from four through three, that would
24 have had a big tail that would have come
25 down onto the ground. Right? Any doubt

1 about that? If their drawing is right,
2 wire coming straight down from four
3 through that tree at three.

4 There would have been lots of wire
5 left to come down onto the ground. But
6 the wire couldn't have been down on the
7 ground. Because that would have energized
8 the ground. Remember JoAnn Goretzka? As
9 soon as she got to the grass, she was
10 thrown backward.

11 Remember Tim Harper, the volunteer
12 firefighter who put the fire out on the
13 telephone wires and saw the plastic
14 melting down from the junction box?
15 Remember he said when he stepped onto the
16 grass, he felt a sliver of electric power
17 coming up his leg?

18 So if Carrie Goretzka had really been
19 standing here (indicating) and the line
20 had been draped from this tree down to
21 that tree (indicating), it would have been
22 also on the ground. She couldn't maintain
23 that position. She would have felt the
24 power as soon as she got off -- as soon as
25 she got off the -- it's not shown here,

1 but as soon as she got off the driveway
2 onto the grass. She would have had the
3 same signal that Harper got and the same
4 signal that her mother-in-law got.

5 This effort to blame her is a
6 disgrace, and it is categorically clearly
7 false. There is no evidence that that
8 line was where they say it was when she
9 was there. There is no evidence it was in
10 that tree. Yeah, it brushed the tree.

11 There was a small burn mark toward the
12 back where it would have come into the
13 tree when it came down on Carrie, but
14 there is no evidence that that line was in
15 that small tree when she came out in that
16 side yard. No evidence at all. Trying to
17 blame her is reprehensible.

18 I want to talk to you about damages.
19 I'm not going to talk to you long about
20 damages, because I don't think very much
21 has to be said about damages by me. I
22 think you are well-equipped to deliberate
23 on this without hearing much from me about
24 the subject.

25 But I want to go through with you what

1 the categories are of damages. I want to
2 discuss -- I'm not allowed to ask you for
3 a sum that is specific. So I want to go
4 through with you and discuss with you what
5 I hope will be your considerations on
6 damages.

7 The first thing I want to say to you
8 is that I want to talk to you about an
9 approach on this. I beg you -- a word I
10 don't commonly use, but I beg you not to
11 sit around and say, "Okay, what is fair
12 for the family?" Then come up with a
13 gross number and then divide it on the
14 slip. That's not fair to these children.
15 It's not fair to her memory. It's not
16 fair to Mike. It's not fair to JoAnn.

17 The right way to do it, respectfully,
18 is to look at each damage claim one by
19 one. Come to a consensus among you. When
20 10-12 agree, you have a verdict on that.
21 And decide what you think is fair on each
22 damage award and each element of damage.
23 And there will be questions, and the
24 questions will have subsets. And that's
25 the proper way of doing it. I say that to

1 you with all respect to you. But I feel I
2 must say that to you. That's the proper
3 way of doing it, what is fair for each
4 person and for each aspect of damages.

5 So the first thing you're going to be
6 asked is -- it will be Question No. 3.
7 "What is the amount for wrongful death
8 damages?" And that amount, you'll be
9 told, should include Michael Goretzka's
10 loss of his wife's services, her society
11 and comfort; Chloe Goretzka's loss of her
12 mother's guidance, moral upbringing and --
13 I'm sorry, guidance, tutelage and moral
14 upbringing; and Carlie Goretzka's loss of
15 her mother's guidance, tutelage and moral
16 upbringing.

17 And you're going to add those three
18 numbers together, and you're going to put
19 one sum on the line. And then by
20 operation of law that money will be
21 divided. That's the way that works.

22 I don't have much to say to you about
23 that. But I just want to remind you of a
24 few things. On Mike Goretzka, I want you
25 to remember what kind of marriage these

1 two had, what a devoted wife she was to
2 him and what a devoted husband he was to
3 her.

4 I want you to remember what they were
5 looking forward to together. Raising
6 these kids together. Having a third
7 child. And that third child is a casualty
8 of this. Being soulmates, depending upon
9 each other, being best friends. And not
10 just when you're 43 and 42, but when
11 you're 53 and 52 and 63 and 62 and 73 and
12 72 and 83 and 82. And the relationship
13 changes as you get older. And you need
14 your spouse for different things as you
15 get older.

16 For your midlife crisis. For your old
17 age. For the sickness part of that oath
18 that we take when we say -- it's in the
19 oath. And I ask you -- money is not a
20 substitute for a marriage. I know that.
21 We can't do anything better than that,
22 given the limitations of the human
23 condition.

24 The principal of the tort system is to
25 find an amount of money which represents

1 making the person whole. That's the idea.
2 That's a lot easier to do when somebody
3 has a broken leg and they're in a cast for
4 six weeks and they have another month of
5 rehabilitation. Much easier to fix a
6 number in that situation. It's very hard
7 to fix a fair number for the loss of your
8 spouse.

9 But what I suggest to you -- and I say
10 this to you with all respect -- is I think
11 you ought to look at that marriage and ask
12 yourself what that marriage meant and
13 means. In all of its aspects; physical,
14 spiritual, emotional. And I ask you to
15 say to yourself -- they would have been
16 married about easily 40 years.

17 I ask you what it will mean for Mike
18 to be without Carrie every second of every
19 minute of every hour of every day of every
20 week of every month of those 40 years and
21 what it's meant for every second, minute,
22 hour, day, week, month, year for the last
23 three and a half years.

24 And I ask you to do the math from
25 that. I don't think it's sufficient,

1 respectfully, to just pick a number out of
2 the air or even take a number and divide
3 by 12, for what it's worth. I think you
4 need to go through the process of saying,
5 "Day-To-Day what is that worth to not have
6 your spouse?" And then do the math from
7 there. I think that is the fair way of
8 doing it.

9 It's Mike having to see Carrie and not
10 having Carrie here to support him when he
11 saw her when she was so badly injured,
12 when he heard her make those noises in the
13 ambulance that didn't sound human. When
14 he told his wife "Don't give up on me" and
15 when he made that promise to her to take
16 care of her girls, when he's had to
17 address his girls crying without having
18 his wife there to support him.

19 When he's been unable to replace her.
20 She's irreplaceable. But even to the
21 extent of just even going out on a date.
22 He can't do it. And the guilt that he
23 feels from not being able to protect her,
24 which will haunt him for the rest of his
25 life. And her not being there to support

1 him through his guilt.

2 And his post-traumatic stress disorder
3 that Dr. Schachter talked about and his
4 major depression, his trouble sleeping and
5 his suicidal thoughts, his inability to
6 enjoy his life. He has this asset in his
7 job of being able to grin and bear it at
8 work. But that makes his recovery even
9 all the more difficult, Dr. Schachter
10 tells us, because he's just a guy that
11 keeps it all in. And that's good in some
12 ways, and it's bad in others.

13 And when you're considering what is
14 fair for the children for guidance and
15 tutelage, losing their mother, it's nearly
16 incalculable, but you have to. I say to
17 you respectfully you have to go through
18 the same analysis on what is fair to
19 compensate these children for every second
20 of every minute of every hour of every day
21 of every week of every month of every year
22 they will be without her.

23 And for those of you on the jury who
24 are old enough to have older parents, you
25 know that that guidance and tutelage

1 actually never ends. It never ends.

2 I promised I would get through this
3 without crying myself. So I'm going to do
4 that. But all of the things that they
5 need her for, she's not there for.

6 And what did Mike Thornburg say? He
7 said she was a fantastic mom. Fantastic.
8 He was the mailman, and he said that. I
9 mean, with the greatest respect to each
10 one of you, how many of your mailmen would
11 say that you're a fantastic parent?

12 What does that mean about what kind of
13 person she was that she was able to evoke
14 that kind of feeling in her mailman?

15 Carlie is a beautiful little girl.
16 She has a ready smile. In all those
17 pictures you see her smiling. But, you
18 know, the pictures of Chloe do not show
19 her smiling mostly. When she came in here
20 to court, it was a little bit of a forced
21 smile. Not from Carlie, but from Chloe a
22 bit of a forced smile.

23 I'm worried about that girl. The
24 evidence is that she has a lot of anger.
25 She has a lot of anger. She acts out

1 frequently. Mike was sort of euphemistic
2 about it. I think he said she's a wild
3 one. I think JoAnn said something similar
4 to that. I have one like that, too. But
5 I worry about her.

6 Maybe you all have one like that in
7 your house, or maybe you've got a niece or
8 nephew like that. Those are the ones you
9 worry about. Because that condition in an
10 eight-year-old, that doesn't usually just
11 go away. That usually, unfortunately,
12 manifests itself in other ways as they get
13 older.

14 And you know all the risks. I don't
15 have to tell you about all the risks there
16 are out there. And I'm not going to tell
17 you that she's not going to be protected,
18 because she's going to be protected.
19 Because Mike Goretzka is going to protect
20 her to the extent that he can. But she
21 needs her mother, and she doesn't have her
22 mother.

23 And the law requires that you fix an
24 amount of money that is commensurate with
25 her loss. And you can't just say there is

1 no amount that does that. Because that's
2 not what the law provides.

3 You took an oath to well and truly try
4 this case before you sat down in these
5 chairs. And you have to follow His
6 Honor's charge, and he'll tell you that
7 you have to award what is fair and
8 reasonable on each of these claims.

9 I say to you respectfully that that
10 means looking at each of these aspects and
11 fixing an amount that truly covers all of
12 it that places these children as closely
13 as can be placed into the same position
14 that they would be if they still had their
15 mother. That is what the idea of making a
16 person whole is about.

17 And that I say to you, respectfully,
18 is a lot of money. It just plain is. And
19 that's true for each one of these girls.
20 And they have remnants of her. They have
21 the pictures on the refrigerator. They
22 have the clothes in her closet, which have
23 been saved in place. And they go, and
24 they play dress-up with those. And they
25 go to the grave, and they talk to their

1 mother at the grave. We've all done that,
2 too. We know that's not an adequate
3 substitute for a parent.

4 And they have these cards
5 (indicating). And these cards are
6 beautiful, and you can ask for them. And
7 you'll get them, if you want them. And
8 they're very positive, those cards. And
9 that's very nice. But that's not reality.

10 They can't go to a sleepover. For
11 those of you who have girls, who have
12 nieces, you know that a sleepover is huge
13 in the development of a young girl. It's
14 huge. Not being able to go on a sleepover
15 is a real problem. Because it's a problem
16 for them in developing appropriate
17 relationships with other kids, other girls
18 particularly, being able to have some
19 independence, of being able to know that
20 you're a big girl just like the other
21 girls. And that's just like one little
22 aspect of this.

23 And how is he going to break them of
24 sleeping in the same room with him every
25 single night? He says he's going to do it

1 when they move into the new house. I know
2 he's going to try. But that is going to
3 be traumatic all by itself. Now, we know
4 that one day that's going to end. That
5 will come to an end. He will not sleep in
6 the same room with those girls. But how
7 will that happen? And when and what will
8 it mean for those girls when that stops?
9 And what other things are going to flow
10 from that?

11 They worry they're going to lose their
12 dad, too. Mike and JoAnn don't know what
13 to say when the girls ask what happened to
14 their mom. How is that conversation going
15 to occur? The girls get scared when they
16 hear a fire truck or an ambulance. At
17 school parties Chloe just pulls away and
18 looks at other mothers. She tells other
19 kids in school they're lucky because they
20 have a mom and she doesn't.

21 Carlie won't go to the bathroom at
22 school without somebody else present.
23 What does that mean? You know the other
24 kids see that. And she knows the other
25 kids see that. I mean, for a girl -- at

1 least my girls, their friends are
2 everything. It's like way more important
3 than school work. Relationships. It's
4 everything for a girl. Everything for a
5 girl is relationships.

6 What do the other kids think of it?
7 What do other kids think of her when she
8 can't go to the bathroom by herself? When
9 she can't go on a sleepover?

10 They have what they call separation
11 anxiety. It doesn't require an
12 explanation. You know what I'm talking
13 about. So that's the first category.

14 The second category is Question No. 4.
15 Carrie Goretzka's pain, suffering and
16 disfigurement and Carrie Goretzka's
17 economic loss.

18 So the first thing is pain and
19 suffering, from what she went through for
20 those three days, for most of which she
21 was unconscious. But for 45 minutes she
22 was conscious.

23 To try to lighten this up slightly
24 just for a moment, do you remember the
25 debate that we had about whether the line

1 was still energized? Whether she really
2 got a full 20 minutes of electric shock?
3 Or whether the power was off? And the
4 mindless decision by West Penn Power to
5 try to argue about whether the line was
6 still on?

7 Even with Mr. Harper telling us that
8 he could feel the electricity coming up
9 his leg? Even with JoAnn herself being
10 shocked by stepping onto the grass? Even
11 with Walt Lipinski, who didn't get
12 there -- remember Walt Lipinski, who was
13 the EMT? Big guy, dark shirt. Purple
14 something. Purple tie. A very solid guy.

15 Remember when I guess it was
16 Miss Deemer said, "So the wire hit her on
17 the wrist; right?" "Nope, ma'am. I said
18 the forearm." Remember that exchange
19 between Mr. Lipinski and Miss Deemer?

20 The questioning of him. "Well, the
21 power wasn't still on?" Well, he told us
22 -- I think he answered my question. He
23 saw sparks and flame coming from her body.
24 He didn't get there until 4:40. The line
25 didn't get off her until 4:50. How do you

1 have sparks and flame coming from her body
2 unless the line is still energized?

3 We had this atrocious argument from
4 Mr. Smyda about how he knew to a certainty
5 that the line was off at 4:29 and 37
6 seconds or some such thing. We know
7 that's not true. Why would they put
8 people up to say these things?

9 I mean, it's an insult to everybody's
10 intelligence in this room, particularly
11 yours. What about that argument "Well,
12 how many volts did she really get? Did
13 she really get 7200 volts?" Remember that
14 discussion? How incredibly offensive.
15 "How many volts did she really get?"

16 I want you to know I am not an
17 electrical engineer, but I have figured
18 out exactly how many volts of electricity
19 Carrie Goretzka got for 20 minutes. I
20 figured it out exactly. Enough. Enough.
21 Enough to kill her.

22 Enough to cause burns; third degree,
23 fourth degree, fifth degree. I didn't
24 know there were fourth and fifth degree
25 burns until this case. Over 80 percent,

1 90 percent of her body. Not enough to
2 kill her instantly, but enough to keep her
3 awake moaning, wincing, crying, being
4 conscious for 20 minutes getting that
5 electric shock.

6 And, again, for this I think you have
7 to ask yourself "What is fair for a second
8 of exposure to that electric shock or two
9 seconds or 12 seconds?" Let's say
10 12 seconds. 12 seconds of a 7200-volt
11 line. 12 seconds. She was getting that
12 exposure for 20 minutes. That is 1200
13 seconds. 1200 seconds. Whatever you
14 think is fair for 12 seconds in your
15 collective wisdom and multiply it by 100.

16 Because let me tell you if it were
17 only 12 seconds, they would be here
18 telling you that. They would be here
19 saying, "It was only 12 seconds. You can
20 get through 12 seconds. You all can in
21 12 seconds, no matter how excruciating."
22 I'm not sure that's true. But that would
23 be their argument.

24 But it was 1200 seconds until that hot
25 stick got that line off of her. What is

1 fair for that? And she has another
2 25 minutes before she gets enough pain
3 medication on board to make her
4 unconscious. So it's 45 minutes of the
5 most gruesome pain and suffering any human
6 being could possibly endure.

7 I defy you in your deliberations to
8 come up with anything that could happen to
9 anybody that could be worse than that.
10 It's impossible.

11 Now, in your consideration of this,
12 there is the issue of the photographs of
13 what happened to her. We could have done
14 this in open court. We could have put
15 those photographs up on the screen for you
16 to see. Of course, the Goretzkas' would
17 have left the room, I'm sure.

18 We could have shown those to you. And
19 this is a very difficult decision for the
20 lawyer for the Goretzka family, because
21 those pictures are indispensable for your
22 fair consideration of what Carrie went
23 through. Indispensable. You cannot know
24 what she went through without seeing that.
25 You have to see that her left hand was

1 basically intact. The idea that she
2 grabbed that line or she touched the line
3 with her hand is belied by the condition
4 of her hand. You'll see it for yourself.

5 You have to see what happened to her
6 arm. You have to see what happened to her
7 face. You have to see what happened to
8 her legs, to her toes. You have to see
9 that. But I know there is some of you who
10 will not be able to bear looking at those
11 pictures. I know that. Or there may be,
12 I should say. And I refuse to make you do
13 it. I refuse.

14 So this is what we're going to do.
15 There are three pictures in here. Just
16 three; one of the arm and the hand, one of
17 his face and one of her lower extremities.
18 If you ask for these pictures, they will
19 come back. They'll come back in this
20 envelope (indicating). They won't come
21 back loose. Please ask for them. For
22 those of you who don't want to look at
23 them, you don't have to. For those of you
24 who think it's important, as I
25 respectfully suggest they are very

1 important, you can look at them. And you
2 can understand what happened to her. And
3 you can share that with your colleagues on
4 the jury.

5 And then that way, those of you who
6 don't want to look don't have to look. I
7 won't impose that upon you unnecessarily.
8 And we did the same thing with the girls,
9 members of the jury. Those girls could
10 have testified. I could have brought them
11 to testify. But I did not want to do that
12 to them or even to you.

13 It was adequate to have them back
14 there so you could meet them. That was
15 adequate. But I could have done a lot
16 more. I could have brought in all the
17 rest of the neighbors and had them tell
18 you the gruesome things that they saw and
19 the EMT's and the other fire-fighters. But
20 we tried to present a case that was
21 sufficient that, respectfully, at least
22 aimed to be understated.

23 Because you don't need every fact.
24 You need the important facts. And you've
25 gotten the important facts from us. But

1 this, I suggest to you respectfully, is
2 very important.

3 Now, you'll then need to consider her
4 -- the economic loss occasioned by her
5 death. And you got those figures from
6 Mr. Lally, the accountant. They were not
7 disputed. They range between \$2.6 and
8 \$4.4 million. You're not required to
9 accept those numbers. You can pick one of
10 those numbers. You can pick something in
11 between.

12 You can decide that she never would
13 have gone back to work and award nothing.
14 You can decide she would have gone back to
15 work and she would have made more. And
16 there is a basis for concluding she would
17 have made more. He had her come back at a
18 significant lower rate of pay than she had
19 been making before. I'm not sure why he
20 did that, but he did.

21 On the other hand, you could conclude
22 they were going to have a third child and
23 she would have stayed out of the work
24 force a little longer. So you can deduct
25 for that. It's strictly up to you.

1 But I want to tell you that that is --
2 those numbers, \$2.6 to \$4.4 million are --
3 I'm allowed to tell you a number there,
4 which I have done. I want you to
5 understand that those are the tip of the
6 iceberg in this case, the tip of the
7 iceberg. And they are really, in a sense
8 -- it's an insult to even talk about those
9 numbers in comparison to what she meant to
10 her daughters and what she meant to her
11 husband and what she went through in terms
12 of her pain and suffering.

13 And I'm reminded of something that was
14 said about this subject during a campaign
15 for public office in 1968, which was a
16 terrible year for our country. And there
17 was discussion about how the country was
18 doing well economically, that we had a
19 wonderful Gross National Product and how
20 we should be focused on that.

21 And the candidate for president said
22 we shouldn't be focused on the Gross
23 National Product; we should be focusing on
24 who we are.

25 Remember I asked Mike Goretzka, "I

1 want you to describe Carrie" with regard
2 to certain words. Remember I picked out
3 words? Beauty, strength of marriage,
4 intelligence, integrity, those words. I
5 wanted to do that because I wanted to be
6 able to read this to you in this closing
7 speech.

8 This man running for president said,
9 "Yet the Gross National Product does not
10 allow for the health of our children, the
11 quality of their education or the joy of
12 their play. It does not include the
13 beauty of our poetry or the strength of
14 our marriages, the intelligence of our
15 public debate or the integrity of our
16 public officials.

17 "It matters neither our wit nor our
18 encourage, neither our wisdom nor our
19 learning, neither our compassion nor our
20 devotion to our country. It measures
21 everything, in short, except that which
22 makes life worthwhile."

23 So when you consider those numbers
24 from Mr. Lally, I want you to consider
25 that they are really the edge of the tip

1 of the iceberg for what this woman meant
2 to her family.

3 Now, then you're asked to determine
4 what to award to JoAnn Goretzka for what
5 she has gone through. And that is in two
6 categories. One is her injury for burning
7 her hands on the ground when she fell
8 backward trying to rescue her
9 daughter-in-law. And the other is her
10 emotional distress arising from what she
11 saw that day.

12 And she told you that she'll never
13 forget what she saw that day. She'll
14 always have that image of Carrie on fire
15 in her mind. She studies all the power
16 lines now when she goes out for a walk
17 with her dog. And she was diagnosed,
18 also, with post-traumatic stress disorder
19 and depression arising from that.

20 And that is, obviously, very
21 difficult. If this case were -- if we
22 tried this case only for JoAnn Goretzka
23 and not for her grandchildren and not for
24 her daughter-in-law and not for Mike, the
25 award to her itself, I respectfully

1 suggest, would be a very substantial
2 award. I ask you not to cast her award to
3 the side. She's a person, too; and she
4 suffered as well.

5 Then you'll be asked what to award to
6 Chloe Goretzka from witnessing what
7 happened to her mother. And what an
8 unbelievably traumatic moment that must
9 have been and how that remains for her and
10 how that must haunt her every day.

11 And you heard Mike Thornburg, the
12 mailman, say that when he saw them, he saw
13 them huddled on the porch in a ball scared
14 out of their minds. And how must that be
15 for her every day?

16 Then you must do the same thing and
17 award what is fair to Carlie for emotional
18 distress from witnessing what happened to
19 her mother. That's a separate area of
20 damages. It's separate from not having a
21 mother. It's the damage from witnessing
22 your mother's death by electrocution, by
23 being on fire.

24 And you heard JoAnn say she heard the
25 kids yell "Mommy. Mommy is on fire."

1 Could there be a more horrible thing for a
2 child to utter and to have to see than
3 that? So you have to decide what is fair
4 for that.

5 Then you have to decide whether Carrie
6 Goretzka was herself negligent. I'm not
7 going to discuss that any more. I
8 respectfully suggest that the answer is
9 no. Then you have to decide whether West
10 Penn Power's conduct was outrageous,
11 which, as I say, is recklessness. I don't
12 have anything more to say to you on the
13 topic of whether it was reckless.

14 Respectfully, I believe we've
15 thoroughly proven the reckless
16 indifference to the safety of others. But
17 if you find it was reckless, outrageous,
18 you have to decide how much to award. And
19 His Honor will tell you that when you
20 decide how much to award, you have to
21 consider several things.

22 You have to consider the
23 reprehensibility of the conduct, its
24 nature. You have to consider fixing an
25 amount that will be a deterrent to them

1 and to others. And you know that your
2 verdict is going to speak very loudly,
3 very loudly. What you say is going to be
4 heard. It will be heard. And we are
5 required to show you the net worth of the
6 company as part of that. That's why we
7 had to reopen the case yesterday.

8 You saw that number was \$244 million.
9 I don't know how they get to a number like
10 that on a public utility, which is a
11 monopoly. But that's, apparently, the
12 number that they publish.

13 That's just West Penn's net worth.
14 And that should not be considered by you
15 in deciding how much to award to
16 compensate. Whether they're worth \$1 or
17 \$20 billion is irrelevant to what is there
18 to compensate the family for what
19 happened. It's an entirely separate
20 issue. And whatever resources they have
21 to pay is not your concern. It's not your
22 concern on damages to compensate. It is
23 relevant on damages to punish.

24 I think it's very difficult to
25 consider \$244 million and to decide what

1 is fair from looking at that as the net
2 worth of the company. Because I don't
3 think any of us deal with numbers like
4 \$244 million every day.

5 So I would suggest to you that we put
6 aside their net worth and we think about
7 them as a person who is not a wealthy
8 person but who did a very bad thing. Just
9 as bad as what West Penn Power did here.

10 And just so we're clear, this case is
11 not about Jill D'Angelo. It's about all
12 of them. It's about Haven Bearley and
13 Jill D'Angelo and the trainers and the
14 people above them who didn't supervise and
15 all of those who went into these decisions
16 not to examine evidence of failures, learn
17 from them, prevent this from happening,
18 from not checking on grounding and all the
19 rest of it to not using the infrared. Not
20 doing all the things they should have done
21 to protect people in this community.

22 Imagine a person did all of those
23 things, and this beautiful woman was taken
24 from the earth for that senseless reason,
25 and you have to decide how much money to

1 take from that person. Because jail
2 wasn't an option.

3 Oh, and, by the way, I left something
4 out that I needed to say. I'm obligated
5 to argue only from the evidence. I can't
6 say anything beyond the evidence. But you
7 heard the evidence in this case that the
8 day of or the day after this tragedy the
9 Public Utility Commission asked West Penn
10 Power "When are we going to get your final
11 report on what happened here? We want to
12 know why this line fell again."

13 Remember that E-mail? "We want to
14 know why this line fell again." They knew
15 the line had fallen before. They knew the
16 line had fallen again. I guess that had
17 been transmitted to them in that initial
18 communication. A year and a half later
19 the evidence was they still hadn't sent
20 that final investigation report to the
21 PUC.

22 And the reason that I bring that up to
23 you is to highlight for you how you are
24 it. You're it. Because there has been
25 such a failure here at West Penn Power.

1 They have not been held accountable for
2 what they've done. They're able to get
3 away with not reporting to the PUC for at
4 least a year and a half. So it all rests
5 with you. With you.

6 Okay. Back to where I was. So the
7 person is only -- they act so
8 reprehensibly they cause Carrie Goretzka's
9 death. They have only \$10 to their name.
10 Just the one Andrew Hamilton. This is
11 their net worth. In fact, this is their
12 worth. This is what they have in their
13 pocket.

14 And you are called upon to decide how
15 much you're going to take from them in
16 order to punish them for the reprehensible
17 thing that they did and deter them and
18 others from this kind of conduct.

19 So what are the options available to
20 you? A fairly wide range. You could take
21 a penny from this person who is worth \$10.
22 And you have to ask yourself, will that
23 punish and deter him? What will the
24 person say who is worth \$10 from whom
25 you've taken a penny?

1 I suggest to you, respectfully, they
2 would brush the award off their shoulder
3 like lint. Let's say that you take a dime
4 from them. They have \$10, and you take a
5 dime. What will they say? Well, it's
6 more than lint off the shoulder, but not
7 much more. Let's say that you take a
8 dollar from them. That probably hurts.

9 Now, I'm not suggesting that you take
10 ten percent from them, which is what a
11 dollar would be. Or one percent, which is
12 what a dime will be. Or one-tenth of one
13 percent, which is what a penny would be.

14 What I do suggest to you is the
15 appropriate way of looking at this is to
16 say what would it be if it were a guy with
17 \$10? How much would that be? To make him
18 feel it. To make him not do it again.
19 And then just go do the math on that
20 \$244 million. That seems to be the most
21 reasonable way of approaching that issue.

22 When I tell you that, I recognize,
23 again, that that is imperfect, but that's
24 what the law requires. And they need to
25 get the message. And getting the message

1 is entirely separate from your award to
2 compensate the Goretzka family for her
3 death.

4 Now, I'm almost through. I'm sure His
5 Honor is delighted by that. I just want
6 to check with my colleagues. (Pause.)

7 I just want to say a couple things to
8 you. I'm very grateful to you for how
9 patient you've been in listening to me.

10 I'm honored to be in this courtroom,
11 Judge Della Vecchia, before you. I'm
12 honored to be the lawyer for this
13 wonderful family. I'm honored to be here
14 with you ladies and gentlemen. It's not
15 been any surprise to me that you've been
16 here early every day. No surprise.

17 There has been no surprise we have not
18 lost a juror. This case is so important.
19 I just want to leave you with this.

20 This is from Edna St. Vincent Millay,
21 "Dirge Without Music." I just changed a
22 little bit of it.

23 "I am not resigned to the shutting
24 away of loving hearts in the hard ground.
25 So it is, and so it will be, for so it has

1 been, time out of mind. Into the darkness
2 she goes, the wise and the lovely.
3 Crowned with lilies and with laurel she
4 goes. But I am not resigned."

5 I ask you to be not resigned. Be not
6 resigned. I ask you to conduct your
7 deliberations with honor for everyone in
8 this case. Go through each question with
9 exquisite care. To vindicate Carrie
10 Goretzka, to vindicate who she was as a
11 person, to vindicate the care that she
12 took for her family when confronting an
13 emergency not of her making, to vindicate
14 Mike Goretzka for having the encourage to
15 be here and to go through this himself, to
16 vindicate people of this community who
17 need to hear from you about what you
18 decide is the culpability of this company
19 for its conduct in relation to its power
20 lines. And to deliver a message to them
21 through your verdict that will make them
22 change, that will deter them from this
23 kind of conduct in the future.

24 I noticed that my opponent did not ask
25 you for a verdict in favor of West Penn

1 Power. Remarkable. I will not follow
2 that lead. I ask you for a verdict for
3 the Goretzka family on each of the
4 questions that are asked. I ask you to
5 find that Carrie was not negligent.

6 I ask you to award very substantial
7 damages in each element of these damages,
8 and I ask you to award very substantial
9 damages to punish. I thank you for your
10 attention to me. God bless you.

11 THE COURT: All right. I want
12 everybody in the gallery and the audience
13 to remain seated after the jury leaves,
14 because I have a few things to say.

15 You've now heard the speeches of both
16 counsel. We're going to take a break
17 before I give my speech. And I will tell
18 you in the speech and as I told you in my
19 opening speech, the closing arguments of
20 counsel are just that. They are not
21 evidence.

22 Mr. Levicoff spoke yesterday and
23 Mr. Specter today. They are not evidence.
24 It's their understandings of the evidence.
25 But it's your understanding that controls.