

South Florida **Sun-Sentinel**

Family gets relief; GM must pay

By NOREEN MARCUS, Staff writer.



Relief finally came to the McGee family on Monday. A Broward Circuit Court jury decided General Motors Corp. must pay \$ 33 million for negligently designing the fuel tank of its Oldsmobile Cutlass station wagon punctured in a 1991 accident in Virginia. Shane McGee, 13, was killed in the ensuing fire. Constance McGee, her husband, Robert, and their daughter, Kelly, were among those seriously injured. During the six-month trial, the parents emotionally testified about watching their son burn to death.

HOLLYWOOD — For the McGee family of Pembroke Pines, a Broward Circuit Court jury's \$ 60 million verdict Monday ended five years in hospitals and courtrooms and freed them to resume lives detoured by a tragic car fire during a vacation in Virginia.

For General Motors Corp., the verdict after an extraordinary six-month trial meant an appeal down the road and, beyond that, newly revealed evidence that could haunt the automaker in other vehicle-fire cases.

In a verdict expected to raise the ante in GM litigation, the jury ordered the giant corporation to pay Constance and Robert McGee and their daughter, Kelly, \$ 33 million for their pain and suffering and a future without Shane McGee, who died in the car fire. His parents saw the 13-year-old boy burn to death.

After deliberating 12 hours over three days, jurors held GM 55 percent responsible for the July 13, 1991, accident that killed Shane and severely burned his parents and sister.

The jury decided Curtis Cayton of Virginia Beach, Va., the driver of a Dodge pickup truck whose run-away trailer punctured the gas tank that started the blaze, was 45 percent responsible. He was not a defendant in the Broward lawsuit and will not have to pay the \$ 27 million the jury apportioned to him.

The McGees previously settled a separate suit against Cayton for an undisclosed sum.

Under Florida law, a non-defendant can be included in a trial for purposes of comparing degrees of fault. A defendant is not liable for anyone else's damages.

The accident at a Virginia highway tollbooth that also killed a McGee cousin and burned another

relative prompted six lawsuits, five of which were settled before the GM trial began in December.

"I'm grateful that it's over and Shane's voice was heard," a tearful Constance McGee said shortly after Monday's verdict was announced.

"I wanted to make sure that people would never forget Shane McGee and I don't think they will," she said. After attending the trial every day, she said she hopes to resume teaching English in Miami-Dade public schools, where Robert McGee also teaches.

Though GM lawyers expressed disappointment and vowed to appeal, they won an important battle: The jury decided not to award punitive damages against the giant corporation.

"There was no intentional wrongdoing," GM attorney James Feeney said following the verdict. The company will try to convince an appellate court "the car was safe and this was a freak accident," he said.

Juror Cristina Kreismann said there was "not enough evidence" to warrant punishing GM with punitive damages. She said jurors decided GM was negligent in where it placed the gasoline tank in the Oldsmobile Cutlass station wagon the McGees were driving.

GM used rear-mounted fuel tanks on its station wagons through 1983. Then it switched to front-wheel-drive models and repositioned the tanks between the axles.

The McGees' attorneys, Sheldon Schlesinger and Robert Kelley, argued that a \$ 4.50 shield GM considered and rejected for cost reasons could have prevented the accident.

According to trial testimony, a 1,300-pound trailer attached to Cayton's pickup broke free of a rusty safety chain and careened across three lanes of

traffic. The trailer's tongue slid under the McGees' station wagon and punctured the gas tank from below, setting off the blaze.

Feeney said the trial was the longest liability case in company history.

It was nowhere near the costliest. The largest award against GM was \$150 million in an Alabama case.

Jim Butler, the Georgia lawyer who won that award and a Georgia judgment for \$105 million in GM vehicle fire cases, said the \$33 million verdict itself will not hurt GM. "Of course not, they've got \$12 billion in cash," he said.

But he said "the McGee trial has a monumental significance to all GM fire litigation because in McGee, a pattern of conduct on the part of GM was finally revealed."

He referred to evidence that GM managers considered a 1973 cost-benefit analysis prepared by GM engineer Edward Ivey when they decided against installing the gas tank shields. The analysis concluded GM would save \$2.20 per car if it prevented all fuel-fed fires in accidents.

Clarence Ditlow, head of the Center for Auto Safety in Washington, D.C., and a longtime GM critic, said the \$33 million verdict is in "the top 10" of awards against the automaker.

"The value of a GM fire case ...has just gone from the single digits to the double digits," he said. Most such cases result in verdicts of less than \$10 million, according to Ditlow, whose group tracks them.

He said the fact that the McGees could not prove there were other, similar accidents involving GM cars worked against their efforts to obtain punitive damages. The Alabama and Georgia

cases involved pickup trucks with side-mounted gas tanks.

“The missing element was the plaintiff’s inability to show other deaths,” Ditlow said.

GM lawyers said during the trial that no similar accident has been recorded in more than 900 billion miles of driving the car model involved in the McGee case.

“A person would have to drive 24 billion miles to even have a chance for an accident like this to happen,” GM lawyer William Kirk said.

Information from The Associated Press was used to supplement this report.