

# Top #3 Ten

JURY VERDICTS OF 2002

## Gas Explosion Nets \$270 Million For Face Burns Largest Verdict In Kentucky History

By Elaine McArdle

It took a Kentucky jury just two hours to return a verdict on Oct. 17 that broke state records: \$270 million for a man burned on the face after a gas explosion at his home.

The plaintiff, a coal miner who has recovered from everything but skin discoloration and psychological trauma, received \$20 million in compensatories and \$250 million in punitive damages.

Although neither side spoke to jurors after the verdict, plaintiffs' lawyer Gary Johnson believes they gave the enormous award to draw the government's attention to a problem Johnson claims is widespread: sub-standard drilling methods that have mixed gas with underground water throughout Kentucky and nearby states. Johnson says similar accidents are waiting to happen.

"You give me the most jaded, toughest group of people in the country, and let me show them how this well was drilled, and I'll win this lawsuit. It was so obvious," said Johnson, who has an 11-lawyer firm in Pikeville, Ky.

"These wells are all over Appalachia, and nobody is doing a damn thing about it," he added. "The jury was hoping - praying. I think - that someone will now take a look at these wells."

The defendant, Kentucky West Virginia Gas, a subsidiary of Equitable Resources, Inc. in Pittsburgh, will appeal, said its trial lawyer, Robert Connolly of Louisville, Ky.

In the meantime, post-trial motions are pending, including a motion for JNOV. Connolly does not believe gas-contaminated water is a widespread problem.

"I respect Mr. Johnson very much, but the evidence that was put on was that this gas well was unique. That was what Mr. Johnson put on, and so I don't fully understand his comment," said Connolly. "But again, it's very difficult for me to express an opinion on why the jury did something that doesn't make any sense to me."

### Flash Explosion

There is no dispute about what happened on the day of the accident two years ago.

The plaintiff, Faion Johnson, 42, was home on vacation at his home in rural eastern Kentucky, when he decided to take a shower.

Finding no water pressure, he walked outside to his pump house to flip a switch to pump up water from his well. As soon as he hit the switch, the pump house exploded, knocking him outside. Johnson's first reaction was to run into his house to check if he still had his ears - he felt like they'd been burned off. His wife, a nurse, drove him immediately to the nearest hospital, 35 minutes away.

"She was afraid he'd lose his airways, because of what he looked like," said his lawyer, Gary Johnson (no relation).

The plaintiff sustained second-degree burns on his face, ears, neck, arms and hands, and spent eight days in the hospital burn unit. "He wanted to commit suicide," said his lawyer. "On the way to the hospital, he was in so much pain he tried to jump out of the car."

The question for jurors was this: What was the source of the gas that exploded? On this, the two sides are strongly divided.

The defendants claimed it was methane gas, a natural byproduct of a coal bed 25 feet below the plaintiff's water well. Connolly said tests the defense performed shortly before trial "were consistent with coal-bed methane gas." The tests showed the gas in the water well did not match gas samples taken from the defendants' gas well, some 107 feet away, he said. Also, underground and surface water flows in a direction away from the plaintiff's water well toward the gas well. For these reasons, Connolly said, the explosive gas in the pump house could not have come from the defendants' gas well.

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The defense argued the plaintiff was negligent because he did not have a vent to carry methane gasses up and out of his water well.

"The accident could not have happened the way it was described unless the vent was absent," said Connolly, who noted the plaintiffs could produce no evidence that the vent existed.

But the jury agreed with the plaintiffs' theory: the gas was not methane at all but thermogenic gas from deep within the earth, which had mixed with underground water because of improper drilling and capping procedures by the defendant some 60 years earlier.

According to Johnson, the case was not a difficult one to prepare or present to a jury. Almost all the documents he needed to investigate the case were public record. Gas companies are required to keep careful records of drilling procedures, which are available online.

Johnson examined the records and found the defendants had done something he claimed was very dangerous when they drilled a gas well in 1941. As they drilled down more than 2,250 feet, they encountered first fresh water, then salt water, which they sealed off by installing a series of telescoping pipes (called casings) that got progressively smaller as they drilled deeper. Eventually, they reached the gas they wanted, which was kept separate from the water by the casings and caps.

"What's the most irresponsible thing you would do if you wanted to say, 'We don't

give a damn about this community?' They removed [two of the] casings, and allowed the water and gas to mix underground," Johnson said.

Why? "So they could re-use the pipe! Now do you see why I got a \$250 million [punitive] verdict?" he asked. It would have cost the company just \$30,000 to fix the gas well, he added.

At trial, there was also a significant debate over what standard of care was in 1941. Connolly contended that the practice in Kentucky at that time was to pull and re-use the casings, which it says could be done without compromising the well.

He noted that when they removed the larger casing, there was still a narrower pipe underneath that kept the gas from mixing with groundwater. According to Connolly, the plaintiffs argued that when you remove the outer casings and thereby increase the space between the outside diameter of the pipe and the inside diameter of the hole, a pathway is created for the gas to rise to the surface and mix with the freshwater aquifer a few feet below the ground surface.

"That's what they say happened," says Connolly. How exactly that could happen, though, is something Connolly does not agree with or comprehend.

Johnson who once dabbled in the oil and gas drilling business as a side interest to his law practice, said he knew that under current laws, gas companies are required to seal gas off from any underground water. That's why he was astonished when he read the records and saw that the defendants had removed the casings that separated the gas from the water.

"It's no secret" what the defendants did, he said. "The state even knows it. It's just that nobody has ever bothered to try and do something about it. It's not that Gary Johnson did some ingenious thing and made some great discovery. And there's more of them, and more of these accidents waiting to happen. As we speak, you have gas wells pumping this stuff into fresh water all over."

In the plaintiff's case, the gas-water mix flowed into his water well, where the gas eventually collected in the pump house, Johnson said. When he turned on the switch, the spark ignited the gas, creating a flash explosion. Today, the plaintiff has re-



**Faion Johnson, 42, was severely burned when he flipped a switch to his pump house and it exploded due to a methane gas leak from a nearby well.**

turned to work but he continues to suffer from depression and is embarrassed about the discoloration of his skin.

"He was the guy who was the life of the party," said Johnson. "Now he just stays in [the] house. It's just changed him. He thinks he's a monster even though his skin is just a different color."

Johnson said he did not dwell on the plaintiff's injuries at trial. Both the plaintiff and his wife described the accident but did not talk about his suffering or pain. Johnson introduced a photo of the plaintiff taken when he was admitted to the hospital. "If that wasn't enough, whatever we said wouldn't make any difference," Johnson said.

Instead, he focused on the defendants' conduct.

Johnson, whose previous verdicts include a \$5 million personal injury award and an \$8 million medical verdict, both in

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### AT-A-GLANCE

**Verdict:** \$270 million total  
\$250 million in punitive damages

**State:** Kentucky

**Type of case:** Personal injury

**Trial:** 3 weeks

**Deliberations:** 2 hours

**Status:** Defendant plans to appeal.

**Case name:** *Johnson v. Equitable Resources Inc.*

**Date of verdict:** Oct. 17, 2002

**Plaintiffs' attorneys:**  
Gary C. Johnson of the law offices of Gary C. Johnson in Pikeville, Ky.  
Size of firm: 11 lawyers

**Defense attorneys:**  
Robert Connolly of the Stites & Harrison in Louisville, Ky.