

X-Ray Firm Attempts to Settle

Cancer case negotiations are under way. Company has 4 days to appeal.

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It took a jury verdict and a record award to persuade Spectrascan Imaging Services Inc., a provider of mammography services to negotiate a settlement with a Macungie woman dying of breast cancer.

The Connecticut-based company wasn't interested in settling with Bonnie Welteroth, 48, during the civil trial, even though Welteroth's doctor, Gene Miller, agreed to a settlement last week as the Lehigh County trial wound down, said Thomas Kline, Welteroth's lawyer.

But the company agreed to talks after a jury ordered Spectrascan to pay the biggest share of a \$33.1 million award, Kline said.

Welteroth's lawsuit had alleged that her cancer spread because of a failure to diagnose it.

Spectrascan has until Monday to file an appeal. In an effort to stave off an appeal, Kline said he agreed to negotiate a reduced amount with Spectrascan. The parties had not yet reached an agreement Wednesday.

Spectrascan's lawyer, James Prahler, could not be reached for comment.

The settlement with Miller came after the evidence, including Miller's testimony, had been presented to the jury, Kline said. The Pennsylvania Medical Professional Liability Catastrophe Loss Fund, or CAT fund,

stepped in on behalf of Miller and his practice, Wescosville OB-GYN Associates, Inc., to settle the case for an undisclosed amount, said John H. Reed, the fund's director.

Reed said the fund agreed to pay Welteroth less than \$2 million.

That is at least \$3 million less than the jury's award against the doctor. The jury assigned Miller 17 percent of the blame, which would have amounted to more than \$5 million.

Because of the settlement, however, the CAT fund must only pay Welteroth the lower figure they agreed upon.

Miller's lawyer, Neil Wenner of Allentown, said the decision to settle was in the best interest of his client, who admitted he made a mistake.

A jury verdict would have exposed Miller's personal assets and that of his practice to claims by Welteroth, Kline noted. a settlement through the CAT fund eliminated that possibility. "After a verdict, everything Miller and his practice owned was at risk," Kline said. "The CAT fund did what the Legislature intended for it to do in protecting Miller."

Spectrascan did not admit liability during testimony, but was assigned 83 percent of the blame, or about \$28 million.

The award was for pain and suffering, past and future wage loss of Bonnie Welteroth and past future medical expenses.

Before the trial started, Kline attempted to introduce evidence about cases involving three other patients of Wescosville OB-GYN Associates. They had alleged Miller and two other doctors in the practice failed to diagnose breast and cervical cancer. The women, all in their late 30s, later died.

Two of the cases settled during trial, and another settled before jury selection began.

Kline, who represented the three women, had contended that those cases and Welteroth's showed a "pattern of practice, which has been consistently and egregiously below the standard of gynecologic management, care, and treatment of women with breast cancer," according to court documents.

Kline asked Judge Robert L. Steinberg to allow that evidence so Kline could ask the jury to award additional damages as punishment.

Although the suits had been settled, Wenner, in his response to Kline's request, denied that the three patients died because of negligent care by doctors with Wescosville OB-GYN Associates.

He denied that any negligence had been proved against the doctors and denied that "these lawsuits demonstrate, in any way, a pattern," of substandard care.

Steinberg ruled that Kline could not tell the jury about the other three cases for several reasons. Two of the cases involved doctors other than Miller, and the one case alleged negligence in diagnosing cervical cancer, not breast cancer.

In addition, the judge considered the times when the alleged negligence occurred.

Welteroth contended her cancer had not been diagnosed in 1995. The other women alleged that negligence occurred in 1990, 1991, and 1988-89.

The judge found there were no connections to all the cases to allow Kline to put that evidence before a jury. The other cases, unlike Welteroth's, did not involve a flaw in the practice's system of getting reports from a radiologist to the doctor after mammograms had been done.

The judge also determined that any relevance the evidence would have had would have been outweighed by the prejudicial effect on Miller in the trial. Allowing that evidence may have hindered Miller's ability to get a fair trial, the judge ruled.

In Welteroth's case, the jury unanimously agreed that Miller and Spectrascan were negligent but had difficulty assigning blame, a woman juror said. The jury foreman would not comment on the settlement. Other jurors did not return calls for comment.

Wenner said jurors should not feel frustrated or as if they played no part in cases that settle during a trial.

Lawyers could agree that they should settle on behalf of their clients but be far apart on the amount of money, Wenner said.

"A jury determines whether the money will be - low, high or somewhere in between," he said, calling the method an innovative way to resolve cases with a little more certainty."

Also, a jury's presence and unpredictable nature of the verdict can pressure parties into settling, Wenner said.

"We're not trying to pull a fast one," he said. "The jury serves a function just by being there."

Wenner said he recently tried a case that went on for nine days before the four defendants settled with the plaintiff.

"The jury was quite upset on the 10th day when the judge said, "Thanks, but the parties have settled, your service is done," Wenner said.

"The only reason that case got settled was because the jury was there," he insisted.