

## **Juror's Award is Record**

*A Lehigh County Couple gets \$33.1 Million for Medical Malpractice*

By Debbie Garlicki Of the Morning Call

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A Macungie Woman who is dying of cancer and her husband Thursday night were awarded what could be an unprecedented \$33.1 million by a Lehigh County jury that found a doctor and a company providing mammography services were negligent in failing to diagnose breast cancer. The jury gave 48-year-old Bonnie Welteroth \$28.1 million in damages and \$5 million to her husband, Scott, possibly the largest medical malpractice award ever in the state and largest personal injury award to a single party.

The jurors found that Dr. Gene Miller and Wescosville OB-GYN Associates Inc. were 17 percent negligent, but that the company that performed mammograms under a contract with Miller was 83 percent negligent. Although Spectrascan Imaging Services Inc. of Windsor, Conn., contended that Bonnie Welteroth may have been partially to blame for her injuries by not seeking follow-up care, the jury rejected that argument. It found no negligence on her part. Spectrascan is the nation's largest provider of mammography services to doctors' offices and serves 600 doctors in 35 states. The company's radiology technologists perform, 15, 000 mammograms a month.

The defendants have 10 days to file an appeal. At the end of the six-day trial, many of the eight men and four women on the jury hugged Bonnie Welteroth, who cancer specialists said has less than a year to live. Attorney Thomas Kline of Philadelphia, who represented the couple, said, "They were genuinely grateful that a jury understood that they had been grievously wronged. "The jury was making a statement as to the poor health care that she received ." Kline had expected an eight-figure award. The jury deliberated four hours. Several jurors shook hands with Miller, who admitted on the witness stand that he made a mistake. His lawyer, Neil Wenner of Allentown, told the jury that the trial is about responsibility and accountability and that Miller never wanted to shirk that. "The jury respected the fact that he (Miller) came forward and admitted his role in this unfortunate tragedy, "Kline said, "I believe that they felt the opposite about Spectrascan."

Spectrascan, through its lawyer, James Prahl of Philadelphia, denied negligence and blamed Miller. The award, Kline said, won't change the inevitable for Bonnie Welteroth. Kline told the jury in his closing argument, "we can't give her back anything but the right thing." Some jurors blinked back tears as he told them that someday they will see Bonnie Welteroth's obituary in a newspaper. "When you see it."

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The Welteroths sought damages for past and future medical expenses and lost wages, pain and suffering, disfigurement and loss of life's pleasure. Kline presented evidence about the amount of expenses and wages. The jury, he said, would have to put a price tag on loss of enjoyment of life and the pain the couple endure. Despite numerous cancer treatments Bonnie Welteroth has continued to work for Dr. David Stein of Allentown as coordinator for referral for managed care.

Bonnie Welteroth, who has three adult children and may not live to see her first grandchild, faithfully got checkups and mammograms because she feared breast cancer, which had claimed the life of her 42-year-old mother and had afflicted an aunt, according to testimony. Because of medical negligence, a marble-size lump in her right breast, which had been detected, grew to the size of a golf ball in eight months, the couples expert witness said. Had the cancer been promptly diagnosed, there was a 90-95 chance Bonnie Welteroth could have been cured, according to specialists. The cancer has spread to her nerves, brain, bones, and lungs.

In February 1995, Miller noted a small lump and ordered that a mammogram be performed by Spectrascan, which had a contract with the doctor in offices across the hall from Miller's practice at 682 N. Brookside Road, Lower Macungie Township. A radiology technologist, Laura Smith, performed the mammogram and sent the film to a radiologist in Virginia, who sent a report to Smith. The parties disagreed on what happened next, which was the focus of the case. Miller testified that he had a system in which reports of diagnosis mammographies, which are ordered when lumps are detected, were to be placed on his desk by Smith, regardless of whether the reports came back showing abnormalities. In the case of routine mammographies with reports that showed nothing abnormal, Smith would place the reports in a pile that would go to Miller's receptionist, who would then send a computer-generated form letter to the patient, telling her all was well.

Despite the fact Bonnie Welteroth had a family history of breast cancer and showed signs of a lump, her report was placed in the pile with reports showing normal results, according to Kline. Bonnie Welteroth got the letter saying there was nothing wrong.

Miller was adamant that he never got the report from the technologist. Although the report did not indicate a lump, Miller said that had he received it as he should have, he would have told Bonnie

welteroth to go for a surgical consultation and biopsy. Miller admitted he was wrong for setting up the system as he did and having an intermediary-Smith-routing the reports.

He also said he was wrong for not telling Bonnie Welteroth, he found the small lump, to see a surgeon. In October 1995, Bonnie Welteroth noticed a lump herself and went to see Miller, who told her to get another mammogram and to see a surgeon. The mammogram performed at the 19th Street Health Center in Allentown, showed a lump and indicated that cancer had spread to her lymph nodes. Bonnie Welteroth's time was running out. She underwent painful radiation and chemotherapy treatments and stem cell replacement, a procedure where good bone marrow is extracted and later transplanted. She went to Mexico for herbal treatment when nothing else worked.

Kline pointed the finger at Spectrascan, saying it had the duty to properly supervise its employee, Smith, who at that time didn't have advanced certifications in mammography. He cited past performance evaluations in which Smith's supervisor, Karen Pass, criticized her for lagging behind in her paperwork. The company also encouraged Smith to get additional certification. Kline also argued that Spectrascan, which had a policy that reports should go from one doctor to another without a middleman routing them, knew or should have known that Miller's system allowed room for error that could cost lives. Prahler argued for Spectrascan that the blame lies solely with Miller. The company claimed Smith did give Miller the report. It also said Smith was under the supervision of Miller, so he was responsible for what she did or didn't do.

Before the case went to the jury, Prahler asked Judge Robert L. Steinberg to instruct the jurors that they could find that Bonnie Welteroth also was negligent for not following up on her care. Steinberg said he hadn't heard any evidence that Welteroth was somehow negligent. The company's radiology technologists perform, 15, 000 mammograms a month. The defendants have 10 days to file an appeal.

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