

Juror's Message is Loud and Clear

\$33.1 million malpractice award reminds doctors and companies they'll be held accountable for mistakes.

By Debbie Garlicki Of the Morning Call

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Lehigh County jurors who awarded \$33.1 million to a Macungie woman in a medical malpractice case were speaking loud and clear that doctors and companies will be punished for mistakes that cost people their lives, said medical and legal experts.

"The bigger the dollar figure is, the bigger the message is," said Charles Inlander, president of the People's Medical Society in Allentown, the largest nonprofit consumer health advocacy group in the country.

"What the juries are doing in these cases is saying to the rest of the medical world, 'This is the only thing we can do, and we have to make it sound loud and clear,'" Inlander said.

Jurors were sending a message that "life is precious and valuable, and this woman was truly robbed and cheated," said Thomas Kline, the lawyer who represented Bonnie Welteroth in her lawsuit.

Welteroth, who is expected to live no more than a year, sued after a flawed system for getting mamography reports to a doctor led to a delayed diagnosis of breast cancer and ultimately will lead to her premature death.

"We wanted to send a message that you have to be accountable," said juror Philip Reightler of Whitehall Township. "There's just no other way to look at it. What they've gone through, that family, there's no amount of money that can compensate for it."

The award Thursday night to Welteroth and her husband, Scott, isn't the largest personal injury verdict ever in the country but ranks among the biggest medical malpractice awards, experts said.

"That's probably one of the larger ones I've heard of," Dave Ransom, assistant director of communications for the Association of Trial Lawyers of America in Washington D.C.

Damage awards this big are unusual in the country, Ransom said. They are also extremely rare in Lehigh County, where patients often lose their malpractice cases against doctors or get much smaller awards, according to local lawyers.

The Welteroth jurors didn't realize the enormity of the figure they had arrived at, said a woman juror who asked not to be identified.

"We didn't go into that jury room thinking this is our chance, we can make a statement," she said. "We were just thinking, this woman's going to lose her life in what amounts to a paperwork error."

The fact that there were two massive awards in the county this week surprised many people in the courthouse. Another jury gave \$5.6 million to the family of an anesthesiologist who overdosed on drugs he got from the hospital's pharmacy while working there.

The Welteroths' award generated much interest around the country, Kline and Inlander fielded questions Friday from national publications and media outlets.

In medical and legal circles, the debate over tort reform was renewed. But one veteran New York City lawyer cautioned that the jury's award, like other phenomenal awards, may not stand up in the long run.

In 1961, Abraham Fuchsberg, who has practiced law for 48 years, got the country's largest award up to that time in a lawsuit. A jury gave \$1.1 million to a boy and his family for injuries the child received when construction material fell from a building roof onto him, leaving him a paraplegic.

"It was unheard of," Fuchsberg said.

The ballyhoo over the award eventually died down, and not many people noticed when the case letter settled for \$650,000 without an appeal.

The company, Fuchsberg said, was on the verge of bankruptcy and only had \$250,000 in insurance.

"Getting a verdict is not the money you put into your pocket," explained Fuchsberg, who several years ago again broke records when he got the country's largest award.

That was \$61 million for a man who lost both legs under a subway train.

Even if large awards are later reduced by a judge, appellate court or a settlement, they can bring about necessary corporate changes, said Judge Robert L. Steinberg, who presided at Bonnie Welteroth's trial. Defective products, flawed or shoddy practices or incompetence can be corrected.

"When you have a verdict of this type, people change the way they do business," Steinberg said.

How much money you get isn't necessarily the point, he added. The point sometimes is social change.

Elsewhere in the country, there have been awards for delayed diagnoses or errors in diagnoses.

In Maryland last week, a jury gave \$430,000 to a woman whose treatment of breast cancer was negligently delayed by a misinterpretation of a mammogram. And in Massachusetts two weeks ago, a jury awarded almost \$5.6 million to the family of a woman who charged that her doctor misdiagnosed her breast cancer.

The Lehigh County jury decided that the lion's share of the \$33.1 million award should be paid by Spectrascan Imaging Services, Inc. of Connecticut. The company provided mammography services to Dr. Gene Miller and Wescosville OB-GYN Associates Inc., where Bonnie Welteroth was a patient.

The jury found Spectrascan 83 percent negligent, and Miller, 17 percent negligent. The amount of the \$33.1 million that the defendants pay will reflect their percentage of negligence.

But in Miller's case, like many others where there are large jury awards, he may end up paying much less.

"We hope there's going to be a satisfactory resolution as to Dr. Miller and Wescosville," said Miller's lawyer, Neil Wenner of Allentown. "I'm confident that will occur without the necessity for further appeal."

Spectrascan's lawyer, James Praher of Philadelphia, couldn't be reached for comment on Friday on whether the company will file an appeal.

The jurors were unanimous in their belief that Welteroth was a victim of negligence. They were not as sure about how to divide the blame. Reightler said Miller's admission of error weighed in his favor.

"If the company as well as the doctor would have come forward right away and admitted they made a mistake, I think a lot of change would have been seen in the amounts. But when the company steadfastly claimed they had no blame, well, it really made everybody very hard," Reightler said.

Kline alleged that because of a flawed reporting system in Miller's office and negligence by Spectrascan, Miller never received a mammography report that would have caused him to tell Bonnie Welteroth to see a surgeon and have a biopsy done.

As a result, the 48-year-old woman had a lump in her right breast that went untreated for eight months. By the time a surgical consultation was done, the cancer had spread.

Steinberg believes the case struck a chord with jurors. Bonnie Welteroth had grave concern about getting breast cancer because her mother died of it and an aunt had it. Despite the fact she went for annual mammograms and did everything she should have done, she could not change how her life would end.

Kline believes the two defense lawyers in the case may have been trying to exclude women from the jury, which was made up of eight men and four women.

The defense lawyers had eight chances to exclude jurors for no reason, meaning they did not have to have good cause for not wanting them on the jury. Seven of those eight were women, Kline said.

He said he debated whether to challenge that but decided not to. He thought the possible strategy of excluding women would bite back.

"I looked at the men and said every man on the jury has a wife, sister, mom or daughter," Kline said.

Kline, who only represents injured parties in suits and doesn't do defense work, has a personal interest in his clients. His mother had breast cancer and battled it on and off all of her life until her death at 74. His father died of leukemia when he was 63.

"I'm very taken by the need to seek justice in these cases when it is unnecessary that a person dies," he said.

He has represented more than 100 women who alleged they were injured by failures to diagnose breast cancer or other forms of cancer. Many of his clients die while the cases are pending. In some, like Bonnie Welteroth's, a court will allow the case to be expedited so it can be resolved before the person dies.

"People who have been treated unfairly by the medical system and have a grave prognosis at least deserve to be treated fairly in the legal system," Kline said.

Kline had asked the jury for at least \$1 million to compensate the Welteroths for past and future medical expenses and lost earnings. The award indicates that the jury gave an additional \$32 million for pain and suffering and the impact of the negligence and the cancer on the Welteroths' lives.

Around the country, juries don't always know that their awards won't be what the injured party receives. About 15-20 states have tort reform statutes that have placed caps on the amount a person can get for such intangibles as pain and suffering, according to Ransom, of the trial lawyers association.

Although a California jury decided a boy injured by medical malpractice should get \$7 million, the award later was reduced to \$250,000 by a judge because of that state's cap.

Indiana, for instance, has a \$750,000 cap on economic damages, such as lost wages, and non-economic damages, such as pain and disfigurement.

The trial lawyers association is a critic of caps, believing that they take away from the jury the ability to decide how much someone is harmed and how much they should be compensated, Ransom said.

"Our view is if you cause someone harm, you should be responsible for the damage you caused," he said. "We are very strong proponents of the jury system, and we think in these cases that these awards should be made by juries that hear all the facts and circumstances."

In the Welteroth's case, a jury that heard the facts was emphatically telling a major corporation, Spectrascan, "that this is wrong, that they weren't careful."