

Kline Secures Highest-Ever Med Mal Award

Cancer was Undetected for Eight Months After Technician Misdirected Mammogram Results

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A Lehigh County jury on Thursday evening returned the high-ever medical professional liability verdict in Pennsylvania, awarding \$33.1 million to a dying woman whose breast cancer went undiagnosed for eight months and her husband.

The entire award was in compensatory damages, said plaintiffs' lawyer Thomas Kline of Kline & Specter Friday. The judgment is apparently the third-highest personal injury award to an individual in the Pennsylvania state trial courts.

The bulk of the judgment was lodged against Spectrascan Imaging Services Inc., which managed a mammography service in the office of the plaintiff's gynecologist. The jury concluded that a Spectrascan technician misdirected the plaintiff's mammogram results to a pile for routine screening tests, rather to a pile for diagnostic tests, which would receive more scrutiny from the doctor.

The doctor and his practice were held 17 percent liable for the misdiagnosis, while Spectrascan was hit for 83 percent of the damages.

The plaintiff, Bonnie Welteroth of Macungle, a coordinator of benefits for a health maintenance organization, had undiagnosed breast cancer from February 1995 through October of that year, because her mammogram did not receive proper attention. By the time it was caught, Welteroth's cancer had spread to her bones, lungs and brain, Kline said. She is expected to die within a year, her lawyer said.

Bonnie Welteroth, 48, was awarded roughly \$1.1 million in past and future medical expenses and lost wages, and \$27 million for pain and suffering. Her husband was awarded \$5 million for loss and consortium.

Lawyers for Spectrascan urged the jurors to find Welteroth contributory negligent, because she had a copy of her mammogram faxed to her at place of employment. Kline refused to object to the defense, even though Lehigh County Common Pleas Judge Robert L. Steinberg said there was no evidence to support a contributory negligence finding. Kline said that Spectrascan's attempt to mount a contributory negligence defense based on Welteroth's failure to read her own mammography correctly was a blunder. "Clearly, it had the opposite effect," said Kline, who believed that the defense engendered sympathy for his client.

James Prahler of Margolis Edelstein in Philadelphia, the attorney for Spectrascan, failed to return a telephone message seeking comment for this story. Neal Wenner of Allentown represented the doctor who treated Welteroth and his practice group. Dr. Gene Miller, Welteroth's gynecologist, and his practice group, Wescosville OBGYN Associates Inc, admitted that their system for handling mammography reports was inadequate. Since Welteroth's treatment, Kline said, the the medical office has changed its practices. The subsequent remedial measures were not introduced at trial. "Dr Miller's counsel took the unusual step of not contesting the actions of his client," Kline said. "As a result, the case became focused on the corporate misconduct of a national corporation. "There was a grievously injured patient, a contrite physician and a national service provider which would take no responsibility for it's actions." Kline, in closing arguments to the jury, called Miller " a victim too-of Spectrascan's shoddy practices."

In February 1995, Welteroth went to Miller for her annual check-up. During the checkup, Miller felt a lump in Welteroth's breast,. For that reason, she was sent for a diagnostic, rather than a routine mammogram. The mammogram would be administered at an office across the hall from Wescosville's where an employee of Spectrascan Imaging, Laura Smith, operated a machine owned by Spectrascan, which produced a mammogram to be read by a radiologist in Virginia. The botch came when the records were sent back to Smith in the Lehigh Valley, Kline said. While all diagnostic mammograms had to be read by Dr. Miller, all normal routine mammograms were examined only by the Virginia radiologist and could upon their return be filed behind the receptionist's desk for a routine letter to be sent to the patient. Miller testified that Welteroth's report was never sent to him for review. Miller also told the jury that he seen the report, he would have sent his patient for a surgical consultation. Markings on the report showed that it had never been read by Miller, and also bore the notation "LS," "for letter sent." That letter would have advised Welteroth that all was well and she should return next year for the annual checkup.

Smith said she could not recall how she treated Welteroth's mammography report, but that it was her practice and custom to route diagnostic mammogram reports to Dr. Miller. The jury chose to believe that the report was misfiled by Smith. One piece of evidence that was damaging to Smith's explanation, Kline said, was a 1993 performance evaluation in which Smith was criticized for allowing " mountains of paperwork" to "pile up."

The largely suburban jury was made up of eight men and four women. According to Kline, the defense used seven of eight peremptory challenges to remove females from the jury pool. "They got what they wished for," Kline said. "My view was that every man has a wife, daughter, sister or mother." The men on this jury displayed extraordinary sensitivity to the faults in the care of this patient. The jurors on many occasions showed emotion. A number of them during the closing argument openly wept for my client. I think that was extraordinary." The jury was out for four hours before returning with its decision at about 8:30 on Thursday night. Kline said there was never a serious possibility of the case not being tried to verdict.

Spectrascan also defended itself of contract grounds, arguing that Miller had agreed to assume the duty of supervising the work of the mammography technician. but, Kline said, the actual practice in Miller's office was for Spectrascan personnel to closely supervise Smith's work. Spectrascan and not Miller paid Smith's salary, also. Kline said that he asked for a punitive damage award against Spectrascan, but the jurors declined to find any.

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