

Doctor and his practice settled cancer case before huge verdict

Negotiations were going on weeks before jury awarded plaintiffs \$33.1 million

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Of the Morning Call

TUESDAY, OCTOBER 6, 1998

Before a Lehigh County jury returned a \$33.1 million verdict against a doctor, his practice and a company that provides mammography services, two of the parties had already settled the case, according to a fund that insures health-care providers in the state.

The Pennsylvania Medical Professional Liability Catastrophe Loss Fund, also known as the CAT Fund, settled the case with regard to Dr. Gene Miller and Westcosville OB-GYN Associates Inc., Lower Macungie Township, for less than \$2 million, the fund's director, John H. Reed, said Monday.

The CAT Fund, based in Harrisburg, provides up to \$1 million in coverage for doctors.

The fund could have paid up to \$1 million each for Miller and the practice, but Reed would not disclose the amount of the settlement, reached in the middle of last week.

"We didn't pay \$2 million," Reed said.

On Thursday night, the jury awarded \$33.1 million to Bonnie Welteroth and her husband, Scott, in their lawsuit against Miller, his practice and Spectrascan Imaging Services Inc. of Connecticut.

The Welteroths' lawyer, Thomas Kline of Philadelphia alleged that a paperwork error allowed Bonnie Welteroth's breast cancer to go undetected eight months and to spread. Bonnie Welteroth, 48, the mother of three grown children, has less than a year to live, cancer specialists said.

The jury found Miller responsible for 17 percent of the award—and Spectrascan liable for the rest.

The award reportedly was the largest medical malpractice award ever in the state.

Before the jury announced its decision, Reed made an offer to Kline, who accepted it, Reed said. "I'm glad we got it resolved," Reed said. "You see what a jury did with the case. You feel glad your clients aren't exposed to that."

Reed said settlement negotiations with Miller had been going on for several weeks before the trial.

Reed did not know whether any agreement had been reached with Spectrascan. Because Spectrascan is not a Pennsylvania professional corporation, a group wholly owned by doctors or other licensed health-care providers in the state, it does not get insurance coverage from the CAT Fund, Reed said.

The CAT Fund is funded by surcharges to doctors, who also must obtain \$200,000 in primary coverage from other insurance companies.

Neither Kline nor James Prahl of Philadelphia, Spectrascan's lawyer, could be reached for comment.

Jurors were not told that a settlement had been made with Miller and his practice. Miller testified in the trial, and his lawyer, Neil Wenner of Allentown, made a closing argument to the jury.

Miller was in the courtroom when the verdict was read.

Reed said it was not unusual for one defendant to settle a case midway through trial and remain as a participant. Either the Welteroths or Spectrascan could have asked that Miller stay in the case despite the settlement.

If one defendant suddenly disappeared during a trial, it could have a prejudicial impact on the remaining defendant, Reed said.

Wenner could not be reached for comment.

During the trial, Miller admitted he should have sent Bonnie Welteroth for a surgical consultation and a biopsy after he noticed a small lump on her right breast in February 1995.

Miller had sent Welteroth for a mammogram, performed by an X-ray technologist for Spectrascan.