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\$23 Million Malpractice Award Caps Couple's 6-Year Struggle

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Sunday, May 28, 2006; C10

Love, and little else, has kept Eileen Wilson going for the past six years.

Love is why she bathes her husband, Fred. Love is why, even in the dead of night, she turns his body every two hours so that he won't develop bedsores that could kill him.

And love, she said, is why she has never given up her fight against the doctors who six years ago left Fred Wilson incapacitated and his wife of more than 30 years to care for him almost entirely on her own.

It was one mistake after another, she said, and last week, a D.C. Superior Court jury concluded that it never should have happened and awarded the Calvert County couple almost \$23 million in damages.

Handed down after a month-long trial, the verdict is one of the largest medical malpractice awards in the District, home to many of the region's biggest hospitals and a hot spot in the national debate over whether malpractice awards should be limited.

But the couple's attorney, Bruce J. Klores, said that far from being the work of a runaway jury, the verdict was a reflection of the ordeal the couple have endured since Fred Wilson was diagnosed in 1999 with a neurological disorder known as hydrocephalus.

"It's not a McDonald's case," he said, alluding to the infamous lawsuit won by a customer of the fast-food chain who was scalded by steaming coffee. "It's anything but."

Not an uncommon condition, hydrocephalus causes excess spinal fluid to collect in the brain cavity; the resulting pressure on the brain can lead to memory loss, urinary incontinence and other problems.

The customary remedy is to insert a catheter connected to a small pump that drains the excess fluid through another catheter and into the abdomen.

In 1999, Wilson, then 59, had surgery to insert such a device, a kind of shunt, into his skull, and his memory and balance quickly improved.

But the incision did not heal, according to the account in the plaintiffs' pleadings. Instead of replacing the shunt, Wilson's neurosurgeon, John W. Barrett, sent Wilson to a plastic surgeon to see about closing the opening. The plastic surgeon, Rafael Convit, was unfamiliar with the device and how or even whether it should be covered, the plaintiffs said. But he went ahead and covered the exposed area with a flap of skin in May 2000.

Wilson went home the same day.

The next day, he went into a coma.

His life would never be the same. Nor would his wife's.

Taken back to Washington Hospital Center, where he had had the surgery, Wilson regained consciousness, but only for a few days before slipping back into a coma.

After more than five weeks at Washington Hospital Center, Wilson was stable but still in a coma, Eileen Wilson said, and she was in the dark about what exactly had happened to him.

Frustrated by the lack of answers from doctors at Washington Hospital, she arranged for her husband to be transferred to Johns Hopkins Hospital in Baltimore.

It was at Johns Hopkins, she said, that she learned that Wilson had fungal meningitis, an inflammation of the brain and spinal cord lining, and it was at Johns Hopkins that he would spend the next five weeks, under the care of Michael A. Williams, a specialist in hydrocephalus.

But the coma persisted, and the couple's medical insurer said it would no longer cover a hospital stay, Eileen Wilson said.

"I had to make a decision about whether to put him in a home or to take him home," she recalled.

Caring for him at home wouldn't be easy, but after talking to the staff at the hospital, she ruled out a nursing home. "I was told by the doctors he probably wouldn't live a month," she said.

So she quit her job as a bookbinder and began learning her new job.

Johns Hopkins staff trained her for five days, teaching her to administer the injections her husband would need and to clean the tracheotomy tube he used for breathing.

And then she took her comatose husband back to their Owings home, which sits on an acre of land in Calvert County.

She set them up on the lower level, where he could be taken out more easily for hospital visits. She put an air mattress for herself next to his bed.

"I just kept talking to him, playing his favorite music," she said.

His children and grandchildren would come by to talk to him, hoping to stimulate his mind.

"Finally, one night, he just came out of it," recalled Eileen Wilson, 63. "I was shocked, shocked. I just looked at him and said, 'Do you know who I am?' and he said my name."

As much as his emergence from months in a coma boosted his wife's spirits, it did nothing to ease the burden of caring for Fred Wilson, a retired plumber. It wasn't long before she started thinking about what had happened, and how they had ended up all but confined to their home, surviving mostly on savings.

In 2003, she and her husband sued the neurosurgeon, Barrett; his practice, the Washington Brain and Spine Institute; and the plastic surgeon, Convit.

More than \$30 million in damages were sought, to cover Wilson's future medical care and to compensate them for their pain and suffering.

With the case about to go to trial last month, Barrett and his insurance carrier agreed to settle for just over \$4 million -- the limit of his malpractice insurance, Klores said.

But the medical practice and plastic surgeon, who were represented by another insurance carrier, ProAssurance, elected to go to trial.

After a trial that lasted nearly four weeks, the 10-person jury spent several hours deliberating before delivering its verdict.

In an interview, the jury forewoman, Miriam Valoy, said the strength of the plaintiffs' case left her wondering why the insurance company had even gone to trial.

"I don't know why they didn't settle," said Valoy, an attorney for non-profit organizations. "It certainly seemed to me that they should have settled, because it was pretty clear they had dropped the ball."

Plaintiff attorneys familiar with the case say it cried out to be settled. "This was a colossal blunder by the insurance company," Patrick Regan of Regan Zambri & Long said. "Good risk-management practice is you got to know when to hold them and know when to fold them."

Frank O'Neil, a senior vice president for ProAssurance, defended his company. "Everybody has a view of things in hindsight," he said. "This case certainly is not over yet. There are appeal issues, and we are evaluating those."

The defendants can appeal both the award amount and the underlying finding of liability. Large awards are sometimes reduced by the judge or an appellate court. A \$24 million malpractice award against the District in 1998 was reduced a year later to just over \$8 million.

Eileen Wilson knows it's not over yet, but she's endured a lot and figures she can endure a little longer.

Still, she's already making plans for her husband. He's going into an intensive rehabilitation program, and she hopes that that and Botox treatment to his hands and elbows will eventually allow him to use a wheelchair, so he can leave his house for something other than a trip to the hospital.

"He would love to get out and go to the flea markets, like we used to do," she said. "He loved to shop."

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