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DAILY REPORT

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Med Malpractice Jury Awards \$5.5M For Wife's Loss Of Eye

TRISHA RENAUD

Fulton Court Week

A FULTON JURY RETURNED a \$5.5 million medical malpractice verdict last month to a Forest Park couple after the woman lost her sight in one eye.

But the jury also found the woman had been contributorily negligent, a finding that reduced the award by 24 percent. But Fulton State Judge Henry M. Newkirk's award of \$542,795 in pre-judgment interest boosted the final recovery for plaintiffs Shawn and Michael Wert, to \$4.72 million.

One of the winning plaintiffs' lawyers, **Robert J. Fleming** of Loewenthal, **Fleming** & Fried, said that the case was his firm's first medical malpractice trial and he and partner David S. Fried were ecstatic. The firm was begun a little more than a year ago.

Shawn Wert, 42, had had a long-standing protein-C deficiency that required her to take an anticoagulant called Coumadin to prevent blood clots from forming. But she claimed that, after abdominal surgery May 21, 1998, her medical

providers discharged her from the hospital without arranging to have her blood work properly monitored.

The result, she alleged, was an inter-cranial bleed in her eye orbit that went unchecked for several days. The bleeding caused enough pressure to crush her optic nerve in her right eye, leaving her permanently blind in that eye. Wert also claimed that she suffered headaches and memory deficits as a consequence of the bleeding, according to court documents.

Wert sued the surgeon, Dr. Edward B. Weiser, his medical group, Southeastern Gynecologic Oncology, and her primary care provider at Meridian Medical Group. After two days of deliberation, jurors found Weiser 61 percent responsible for Wert's injuries and Southeastern Gynecologic 15 percent responsible, but found that Meridian and several other individual defendants were not negligent. The panel awarded Shawn Wert \$5 million and her husband \$500,000 for his loss of consortium claim. *Wert v. Weiser*, No. 99VS155245D (Fult. St. Sept. 26, 2002).



Robert Fleming

Dennis Gary Lovell Jr. and Alwyn R. Fredericks of Carlock, Copeland, Semler & Stair represented Weiser and Southeastern Gynecologic. Neither attorney could be reached for comment.

According to court documents, Weiser and his medical group argued that follow-up care was the responsibility of other medical providers who knew about Wert's condition.

According to **Fleming**, the defendants claimed Wert also had been negligent by not consulting a doctor after the surgery when a cut on her leg bled more than usual—a possible sign that her medication levels were wrong.

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