

COOK COUNTY  
**JURY VERDICT REPORTER**

Cook County Jury Verdict Reporter

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**PRODUCT LIABILITY--FIRST TRIAL REGARDING CONTAMINATED HEPARIN OUTBREAK**  
(CCC 42/1) *Estate of Steven Arthur Johansen, deceased v Baxter Healthcare Corporation, Scientific Protein Laboratories LLC* 09L-11175 Tried May 16-Jun. 9, 2011 (11, 12D)

Verdict: \$625,000. Special Interrogatory: Do you believe that Steven Johansen received defective heparin that was a cause of his injuries? "Yes."

Judge: Jennifer Duncan-Brice (IL Cook-Law)

Pltf Attys: Donald J. Nolan, Thomas P. Routh and Stephen C. Swanson of *Nolan Law Group* and David W. Zoll of *Zoll, Kranz* (Toledo, OH)

Deft Attys: Michael D. Jones and Leslie M. Smith of *Kirkland & Ellis* for both defts

Pltf Medl: Dr. Frank Donatello, D.O. (Family Practice) and Dr. Ronald K. Hamburger (Nephrologist)

Pltf Experts: Clifford Siporin, Ph.D., Greystone Pharmaceutical Consulting Inc., P.O. Box 8355, Coral Springs, FL (561-572-2700) (Microbiology), Walter Jeske, Ph.D., Loyola University Medical Center, 2160 S. First Ave., Building 110, Room 5219, Maywood, IL (708-327-2842) (Pharmacologist), Dr. Joseph Kiss, Institute for Transfusion Medicine, 3636 Boulevard of the Allies, Pittsburgh, PA (412-209-7326) (Hematologist), Patricia Earl, XStream Systems, 111 Main St., Bowling Green, OH (772-388-1823) (Pharmaceutical Sales), Dr. Suzanne Parisian (FDA Regulations), Dr. Thomas Hinkamp (Cardiothoracic Surgeon), Dr. David J. Leehey (Nephrologist) and Dr. Stanley Nasraway (Infectious Disease)

Deft Experts: Robert Linhardt, Ph.D., Rensselaer Polytechnic Institute, Center for Biotechnology & Interdisciplinary Studies, 4005C Biotechnology Building, 110 8th St., Troy, NY (518-276-3404) (Pharmacologist), Dr. James Paparello, Northwestern Memorial Hospital, 675 N. St. Clair, #18-250, Chicago, IL (312-695-0596) (Nephrologist), Dr. Frank Becker (Pulmonologist) and Dr. Gary Noskin (Infectious Disease) for both defts

Pltf contended Steven Johansen received low doses of contaminated heparin during dialysis treatments at Crestwood Dialysis on December 7 and December 10, 2007, and thereafter received a more highly contaminated bolus dose during a hospitalization at Palos Community Hospital on December 12, 2007. As a result, M-63 retiree Johansen died on December 13, 2007, survived by his wife and four children; he was a former meat plant worker and Teamsters Union member. The active pharmaceutical ingredient of the heparin blood thinner had been manufactured in China, shipped to deft Scientific Protein Laboratories in Waunakee, Wisconsin, and then sold to deft Baxter Healthcare Corporation (based in Deerfield, IL) who manufactured the finished Heparin Sodium Injection USP product at its manufacturing facility in Cherry Hill, New Jersey. The contaminant in the drug was determined to be a man-made "fake heparin" known as over-sulfated chondroitin sulfate (OSCS), which was reported to have caused many adverse reactions including fatal allergic-like reactions. Baxter Healthcare recalled its heparin vial products in early 2008 following an alarming and unexpectedly high rate of reported adverse events and deaths that resulted in a nationwide healthcare crisis. The contaminated heparin crisis and resulting lawsuits received national attention and sparked a congressional investigation into the regulatory oversight of drugs imported from China and other developing countries, as well as the procedures by which American drug companies monitor the quality of product received from foreign suppliers. The defendants argued proof was lacking that Johansen received contaminated heparin. The defense claimed he died from unrelated sepsis arising from diagnosed pneumonia, and further maintained he was already critically ill from acute renal failure emanating from a rare vasculitis condition. Settlement discussions between the parties are confidential. This was the first case to go to trial of the many pending lawsuits involving contaminated heparin with the active pharmaceutical ingredient sourced from China. Approximately 400 lawsuits are pending in the Cook County Circuit Court of Chicago before Judge Jennifer Duncan-Brice, and approximately 515 lawsuits are pending in U.S. District Court in Toledo, Ohio.

## CARRIER--CAR REAR-ENDS TAXI WHILE PEDESTRIAN LEANING INSIDE CAB WINDOW

(CCC 42/2) *Daphne Franks v Shamin Syed, Chicago Carriage Cab Corp., Chicago Elite Cab Corp.* 09L-596 Tried May 25-26, 2011 (4)

Verdict: \$110,000 after 50% off \$220,000 v all defts (\$190,000 past medical expenses; \$20,000 disfigurement; \$10,000 lost wages; \$0 past and future pain & suffering). Special Interrogatory: Did the stopped position of Shamin Syed's taxi proximately cause the plaintiff's alleged injuries? "Yes."

Judge: Thomas E. Flanagan (IL Cook-Law)

Pltf Atty: David N. Baum of *Gonsky, Baum* Demand: \$350,000 policy Asked: \$510,000

Deft Atty: David A. Djirikian of *Kennedy & Associates* for all defts (Pacesetter Adjustment Co.) Offer: \$12,500

Pltf Medl: Dr. Steven Dayan (Plastic Surgeon)

May 31, 2008, pltf pedestrian was standing next to deft's taxi at 3:45 a.m. while it was stopped eight to ten feet from the curb outside U.S. Beer Co. at 1815 N. Clybourn, partially blocking the northbound lane of traffic. Pltf leaned her head and shoulders inside the cab's front passenger window and was talking to the cab driver when a northbound vehicle driven by Stephen Nuter struck the taxi. The impact caused pltf's head to hit the window frame and she then fell to the ground. Pltf F-40 suffered loss of consciousness, nasal bone fracture, deviated septum, and multiple facial lacerations with scarring, requiring two plastic surgeries; she had undergone previous surgery in 2005 for a deviated septum (\$96,099 medl., \$4,002 LT 2 months as bartender/waitress). Pltf contended deft M-51 cab driver failed to pull over to the curb where he would not block the lane of traffic and pltf could talk to him in safety. The defense argued the position of the cab was not the cause of the accident and alleged injuries, the sole proximate cause of the collision and injuries was the negligence of non-party Nuter, pltf was not a passenger so the highest degree of care did not apply, and pltf was not injured to the extent claimed. Judge Flanagan instructed the jury on the duties of a common carrier. Nuter settled out for his \$50,000 policy pre-suit (to be set-off from verdict). Defense counsel notes that the jury initially returned a gross verdict of \$110,000 (itemized as \$95,000 past medical, \$0 pain & suffering, \$10,000 disfigurement; \$5,000 LT) and found the pltf 50% at fault, but failed to reduce the verdict and awarded pltf the full amount of \$110,000; Judge Flanagan instructed the jury to recalculate and the jury returned the verdict as listed above.

## MEDICAL MALPRACTICE--PARAMEDICS BLAMED FOR CHILD'S DEATH--RETRIAL

(CCC 42/3) *Estate of William Smith, deceased minor v City of Chicago* 05L-5412 (refiled from 01L-11271) Tried Jun. 13-16, 2011 (12W)

Verdict: Not Guilty. Special Interrogatory: Was the conduct of the paramedics willful and wanton? "No."

Judge: Thomas L. Hogan (IL Cook-Law)

Pltf Attys: Francis P. Morrissey and Brian T. Monico of *Burke, Wise* Demand: \$1,000,000 + Asked: \$4,000,000 +

Deft Attys: Thomas J. Lawler and James F. Ormond of *Chicago Corporation Counsel* (Self-Insured) Offer: \$100,000 (indicated)

Pltf Experts: Dr. Kevin R. Brown (Emergency Medicine) and Arthur Romano (Paramedic)

Deft Expert: Dr. Max Koenigsberg (Emergency Medicine)

Three-year-old William Smith exhibited symptoms of bronchial asthma around noon on Sept. 20, 2000, causing his mother to provide him with Albuterol via a nebulizer. Around 5:30 or 6:00 pm, his babysitter Carolyn Williams noticed the child was having difficulty breathing and his symptoms did not appear to improve after she treated him with his nebulizer, so she called 911 and requested an ambulance. Chicago Fire Department paramedics Sarah Guth and John Hernandez responded to the Smith home in the 3800 block of South Langley. Williams contended the paramedics provided treatment to William with his home nebulizer and then left the scene after his condition appeared to improve, without transporting him to a hospital. The paramedics denied they made contact with the child and instead maintained they showed Williams where to plug in and how to operate the nebulizer before they left. Moments after the paramedics returned to their firehouse, they were again dispatched to the Smith home. When they arrived, they found William in respiratory arrest. They treated and transported him to Mercy Hospital, where he was pronounced dead at 7:15 pm. The defense denied the paramedics were willful and wanton in the services they provided, as they had made no contact with the child. The case was previously tried in February/March 2011, ending in a hung jury (reported at CCC 33/4).