

COOK COUNTY
JURY VERDICT REPORTER

Cook County Jury Verdict Reporter

November 10, 2006
Issue 4

Volume YY
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BY:

MEDICAL MALPRACTICE--PHARMACY'S DRUG ERROR BRINGS PUNITIVE DAMAGES

(YY 4/1) *Estate of Leonard L. Kulisek, deceased v Walgreen Co., James Wilmes 02L-13158 Tried Sep. 7-29, 2006 (12D)*

Verdict: \$31,351,107: \$6,351,107 compensatory damages v both defts (\$351,107 medical expenses; \$3,300,000 survival pain & suffering; \$2,200,000 loss of normal life; \$500,000 disfigurement); \$25,000,000 punitive damages v Walgreen. Special Interrogatories: Was the prescription error a proximate cause of Leonard Kulisek's death? "Yes." Was James Wilmes under the influence of controlled substances on Jan. 1, 2001, which was a proximate cause of the prescription error? "Yes." Did Walgreen's supervision of James Wilmes show an utter indifference or conscious disregard for the safety of others? "Yes."

Judge: Arthur L. Janura, Jr. (IL Cook-Law)

Pltf Attys: David A. Axelrod and Stacey L. Leinheiser of *David A. Axelrod & Associates* Demand: \$6,000,000
Asked: \$31,601,107

Deft Attys: Thomas J. Andrews and Michael C. Holy of *Johnson & Bell* for both defts (Partially Self-Insured; AIG) Offer: \$300,000

Pltf Medl: Dr. George Podzamsky (Internist)

Deft Medl: Dr. Alfredo Tiu (Nephrologist), Dr. Jeffrey S. Farbman (Neurologist) and Dr. Jose Gonzalez (Pathologist)

Pltf Experts: Dr. F. Gary Toback, University of Chicago Hospital, 5841 S. Maryland Ave., MC 5100, Chicago, IL (773-702-6134) (Nephrologist), Dr. Scott A. Kale (Internist) and Dr. Robert Barkin (Pharmacologist)

Deft Experts: Dr. Richard I. Quigg (Nephrologist), Dr. Lawrence R. LaPalio (Geriatrics) and Ronald W. Buzzeo, R.Ph., Buzzeo PDMA Inc., 1025 Boulders Pkwy., Richmond, VA (888-590-9954) (Pharmacist)

Jan. 1, 2001, deft James Wilmes improperly filled Leonard Kulisek's prescription for Allopurinol with the wrong medication at a Walgreen's pharmacy at 38 E. Golf Rd., Schaumburg. Wilmes, the store's pharmacy manager, erroneously dispensed Glipizide, an anti-diabetes medication used to lower blood sugar, in a bottle labeled as Allopurinol, the medicine prescribed to Kulisek to prevent recurrence of gout. On Jan. 13, 2001, after ingesting Glipizide for 2 days, Kulisek became hypoglycemic, suffered a diabetic coma, and was hospitalized with acute renal failure; he had suffered from minor chronic renal failure prior to the Glipizide ingestion, but had never been in severe renal failure. The acute hypoglycemia was allegedly the proximate cause of Kulisek developing acute severe renal failure. Four days later, Kulisek M-77 was placed on permanent dialysis. He was unable to resume his regular activities, including assisting in the care of the children of his friend Richard Marston (Administrator of Kulisek's Estate) and volunteer tutoring at a local elementary school. On May 19, 2001, Kulisek suffered a stroke, which was caused by the dialysis, after which he required 24-hour care and a feeding tube for the rest of his life. He also suffered episodes of aspiration pneumonia, and died from end stage renal disease on Nov. 11, 2002. In addition to negligence and wrongful death, pltf alleged negligent supervision and willful and wanton conduct for reckless employment of an unfit agent. From 1993 to Dec. 6, 2001, Wilmes had been stealing for his own consumption at least 8 to 9 doses of narcotic controlled substances per day from the Walgreen's where he worked. When he was caught, Wilmes admitted to the theft and consumption of more than 86,000 doses over an 8-year period. Despite the missing controlled substances, Walgreen's failed to detect the thefts prior to the date of Kulisek's prescription error, a period of over 7 years. Controlled substances are regulated pursuant to the U.S. Drug Abuse Prevention & Control Act and the Illinois Controlled Substances Act, but pltf contended Walgreen's failed to comply with these laws, failed to properly monitor controlled substances, and failed to implement policies and procedures necessary to detect the theft and ingestion of controlled substances. Defts admitted negligence in misfilling the prescription and admitted some injury was caused to Kulisek, but claimed he only sustained transient hypoglycemia and denied the error caused the renal failure, dialysis, stroke and death. Walgreen's maintained it complied with all laws and denied any negligent supervision or willful and wanton conduct, arguing it was difficult to catch the theft of 8-9 doses per day. Post-trial motions are pending.

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