



### VERDICT of the MONTH

#### Products Liability

Plaintiff claimed patient infected with hepatitis C from shared vial

**\$505,100,000**

*Chanin v. Teva Parental Medicines Inc.*

Clark Co., Nev., Dist. Ct.

**Plaintiff Counsel** Robert T. Eglet (lead), Robert M. Adams and Marni Watkins, Minor Eglet, Las Vegas, Nev.; William S. Kemp, Kemp, Jones & Coulthard, LLP, Las Vegas, Nev.

**Defense Counsel** Mark E. Tully (lead) and U. Gwyn Williams, Goodwin Procter LLP, Boston, Mass.

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**RESULT** The jury rendered a plaintiff's verdict. It awarded Williams \$1,247,293.

**TRIAL DETAILS** Trial Length: 9 days  
Trial Deliberations: 5.5 hours  
Jury Composition: 3 male; 4 female

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's and defense counsel.

—Jaclyn Stewart

## MISSOURI

### PRODUCTS LIABILITY

Automobiles — Design Defect — Rear-ender — Passenger

## Driver's seat collapsed in crash, injuring toddler in backseat

**VERDICT** \$8,000,000

**CASE** Sally George, as Next Friend of Aaliyah George v. Johnson Controls Inc., the Missouri Department of Transportation, Chrysler Group LLC and Mary Ellen Cunningham, No. 09AE-CV01513  
**COURT** Platte County Circuit Court, 6th, MO  
**JUDGE** Abe Shafer  
**DATE** 8/6/2010

**PLAINTIFF ATTORNEY(S)** Robert L. Langdon (lead), Langdon & Emison, Lexington, MO  
Adam Graves, Langdon & Emison, Lexington, MO  
Phyllis Norman, Langdon & Emison, Lexington, MO

**DEFENSE ATTORNEY(S)** Tracy G. Ferak, Reed Smith LLP, Chicago, IL (Johnson Controls Inc.)  
Adam Suroff, Polsinelli Shughart, P.C., Kansas City, MO (Johnson Controls Inc.)  
Richard K. Wray, Reed Smith LLP, Chicago, IL (Johnson Controls Inc.)

**FACTS & ALLEGATIONS** In 2007, plaintiff Aaliyah George, 2, was in a car seat in the backseat of a car driven by her grandmother when it was hit from behind in northwest Missouri. Aaliyah was properly restrained in her car seat, riding behind her grandmother, Margaret Steele, in a Dodge Neon, when it was rear-ended while stopped at a red light. The driver's seat latch

broke, causing Aaliyah's grandmother's head to go back and strike Aaliyah's head. Aaliyah sustained brain damage as a result of the accident and suffered partial paralysis.

Aaliyah's mother, Sally George, sued Johnson Controls Inc., the Missouri Department of Transportation (MDOT), Chrysler Group LLC and driver Mary Ellen Cunningham. She sued Johnson Controls, the manufacturer of the car seat, and Chrysler Group, the car manufacturer, for products liability. She claimed MDOT was liable for negligently placing two traffic lights within 50 yards of each other. Numerous accidents had occurred at the intersection because drivers had a tendency to respond to the wrong light. George claimed Cunningham was liable for negligent operation of a motor vehicle.

MDOT was voluntarily dismissed when Cunningham admitted that she was talking to her sister while driving and that she was distracted. Cunningham reached a confidential settlement with the George family. Chrysler Group was dismissed pursuant to its bankruptcy proceedings, and the case went to trial against Johnson Controls only.

George's seat design specialist testified that the Neon seat designed by Johnson Controls was defective and unreasonably dangerous. The expert explained that the design of the seat allowed a twisting of the seat back in a rear collision. He testified that the seat should have been designed with dual recliners.

The plaintiffs' accident reconstruction expert testified that Cunningham hit Aaliyah's vehicle at a speed of 30 mph, with a delta-v of 16.

Johnson Controls denied liability. The defendant's accident reconstruction expert estimated Cunningham's speed to be 43 mph. Johnson Controls' biomechanics expert testified that because of the severity of the impact, Aaliyah was pushed forward 4-10 inches. However, she agreed with the plaintiffs' biomechanics expert, who was of the opinion that had the seat not collapsed Aaliyah would not have sustained massage brain damage.

Johnson Controls' corporate representative, Steve Koss, testified regarding seat design. He acknowledged that the company's own testing had shown that the seat would fail exactly as it had in the accident.

**INJURIES/DAMAGES** *brain damage; diminished cognitive ability; fracture, skull; hemiparesis; infarct*

Aaliyah suffered multiple skull fractures and a massive injury to her left frontal lobe. She also suffered a localized infarct in the area of her brain controlling motor function. She spent nearly a month in Children's Mercy Hospital in Kansas City. Aaliyah has permanent hemiparesis of the right side of her body, almost no use of her right hand, and limited use of her right leg. Although she is able to walk, she does so with an altered gait. Aaliyah's most severe injuries were to her brain, which was damaged in areas that control higher learning, speech and thought processes. Aaliyah's doctors testified that she will not likely progress cognitively beyond the age of an adolescent. Her current IQ was estimated to be 80 by her neuropsychology expert, but he opined that her cognitive abilities could worsen over time.

## MISSOURI/NEVADA

Aaliyah currently attends preschool, accompanied by her mother, and is enrolled to begin kindergarten at a private Catholic school in the fall.

Plaintiffs' counsel asked for economic damages ranging from \$5 million to \$11 million, depending on whether jurors found that Aaliyah would need 24-hour care, as suggested by her life care planning expert.

The defendant's neuropsychology expert administered a two-hour psychiatric evaluation. He concluded that there was no reason to think Aaliyah would have any problems in the future from her brain injuries. Plaintiffs' counsel impeached the witness by offering into evidence the expert's own publication, which described how brain injury in a child can stop the child's normal progress and cause increasing problems over time.

**RESULT** Jurors returned a plaintiff's verdict, awarding damages of \$8 million.

**DEMAND** \$4,900,000  
**OFFER** \$50,000

**TRIAL DETAILS** Trial Length: 2 weeks  
Trial Deliberations: 1.5 days

**PLAINTIFF EXPERT(S)** Cheryl Buntz, R.N., life care planning, Independence, MO  
Joseph L. Burton, M.D., injury biomechanics, Alpharetta, GA  
Lou D'Aurelio, car seats, Philadelphia, PA  
Bradley G. Sewick, Ph.D., neuropsychology, Southfield, MI  
Marius Ziejewski, Ph.D., accident investigation & reconstruction/ failure analysis/product liability, Fargo, ND

**DEFENSE EXPERT(S)** Robert F. Asarnow, Ph.D., neuropsychology, Los Angeles, CA  
Cleve Bare, P.E., accident investigation & reconstruction/ failure analysis/product liability, Rochester Hills, MI  
Catherine Ford Corrigan, Ph.D., biomechanics, Philadelphia, PA

**EDITOR'S NOTE** This report is based on information provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

—Shannon Green

VERDICT *of the* MONTH

## NEVADA

**PRODUCTS LIABILITY****Design Defect — Failure to Warn — Strict Liability****Plaintiff: Patient infected with hepatitis C from shared vial**

**VERDICT** \$505,100,000

**CASE** Henry Chanin and Lorraine Chanin, husband and wife v. Teva Parenteral Medicines Inc., formerly known as Sicor Pharmaceuticals Inc., a Delaware corporation; Sicor Inc., a Delaware corporation; and Baxter Healthcare Corp., a Delaware corporation, No. A571172  
**COURT** Clark County District Court, NV  
**JUDGE** Jessie Walsh  
**DATE** 5/7/2010

**PLAINTIFF ATTORNEY(S)** Robert T. Eglet (lead), Mainor Eglet, Las Vegas, NV  
Robert M. Adams, Mainor Eglet, Las Vegas, NV  
William S. Kemp, Kemp, Jones & Coulthard, LLP, Las Vegas, NV  
Marni Watkins, Mainor Eglet, Las Vegas, NV

**DEFENSE ATTORNEY(S)** Mark E. Tully (lead), Goodwin Procter LLP, Boston, MA  
U. Gwyn Williams, Goodwin Procter LLP, Boston, MA

**FACTS & ALLEGATIONS** In June 2006, plaintiff Henry Chanin, 58, a headmaster of a private school, underwent a routine colonoscopy at Desert Shadow Endoscopy Center in Las Vegas. During the procedure he was administered a 50-milliliter vial of propofol, a generic form of anesthesia manufactured by Teva Parenteral Medicines Inc., of Israel, and distributed by Baxter Health care Corp., a United States company with an exclusive agreement with Teva to market and distribute propofol.

Chanin alleged that, days after the colonoscopy, he had blood work performed that came back positive for hepatitis C.

Chanin sued Teva and Baxter, alleging claims of strict liability, design defect, failure to warn and breach of the implied warranty of fitness for a particular use. Plaintiffs'