

# DRUGS & SUPPLEMENTS

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PREMIER ISSUE

COLUMNS

## A TOXICOLOGIST'S LOOK AT PPA AND STROKE

Drugs & Adverse Events:  
'Power to the People'

And:  
Death, Disease Rates Normal  
For Virus-Contaminated  
Polio Vaccine Recipients

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user doctrine in *In re Brooklyn Navy Yard Asbestos Litig.*, 971 F.2d 831, 838 (2d Cir., 1992).

In response to the Second Circuit's question, the Connecticut Supreme Court concluded, "The certified question is answered: Yes," holding that Upjohn was insulated from liability. After analyzing the CPLA and its legislative history, the state court held that the CPLA had not abrogated the learned intermediary doctrine and that the learned intermediary doctrine and the sophisticated user doctrine were not appropriately analogized.

The court further stated that, because there was no lack of communication between physician and patient, it declined to decide whether certain exceptions to the doctrine applied to Vitanza's case and found no reason to create a new exception.

Based on the supreme court's findings, the Second Circuit affirmed the district court's grant of summary judgment to Upjohn.

Plaintiff was represented by Jonathan M. Levine of Silver Golub & Teitell in Stamford, Conn.

Defendant was represented by Timothy W. Donahue of Delaney, Zemetis, Donahue, Durham & Noonan in Wallingford, Conn.

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Opinion Ref# DRU-0201-13

## Dialyzer

### Illinois Class Action Complaint Alleges Defective Dialyzers Killed Over 56 Patients

CHICAGO — A class action lawsuit filed against Baxter International, Inc., and Minnesota Mining & Manufacturing Co. (3M) alleges that Baxter's A, AF and AX series

dialyzers caused numerous injuries and fatalities when traces of perfluorohydrocarbons, a processing fluid manufactured by 3M used to test for leaks, was not removed from the machines before they were distributed. *Loverling Jr. v. Baxter International, Inc., et al.*, No. 01L-014627 (Ill. Cir. Ct., Cook Cty.).

The Nov. 13 complaint, which was removed by defendants to the Northern District of Illinois on Nov. 27 (N.D. Ill., No. 01cv9071), seeks compensatory damages for a class of patients who were treated with the allegedly defective dialyzers, many of whom died days after treatment.

Plaintiff Calvin Loverling Jr. appears as special administrator of his deceased father's estate.

The senior Loverling suffered from diabetes and underwent dialysis treatments twice a week. On March 14, 2001, his treatment was administered using a dialysis machine manufactured by Baxter. He died the next day.

Plaintiff states that Baxter recalled some of its dialyzers abroad in August and October 2001 after numerous patients died shortly after being treated with them. On October 18, 2001, Baxter launched a global recall of its A, AF and AX series dialyzers. At the time, the company noted that the recall was a precaution and that it had not determined whether the product had caused the deaths.

That November, Baxter issued a press release announcing that testing of the recalled dialyzers revealed remnants of a processing fluid called perfluorohydrocarbons (PF 5070), which was used in the manufacturing process of certain dialyzer fibers to test for leaks. The PF 5070, manufactured by defendant 3M, should have been removed from the filters after they were completed.

According to the complaint, Baxter chairman and chief executive Harry Jansen Kraemer Jr. said at the time that "you never have 100 percent definitive proof, but it all fits together pretty well. The deaths started occurring when [Baxter] changed the manufacturing process and used the fluid. And the way the people died was consistent with the animal exposures."

PF 5070 has a low boiling point, the complaint states. When it becomes a gas, it creates bubbles that cause blockage and interference with the flow of blood to the lungs and the delivery of oxygen, resulting in death.

In patients who suffer from end-stage renal disease, the kidneys fail to adequately clean the blood. These patients must undergo hemodialysis and circulate their blood through a dialysis machine that cleans it of toxins.

The primary component of a dialysis machine is the dialyzer. The dialyzer is a large canister containing thousands of hair-like fibers through which the blood is passed. Dialysis solution, a cleansing fluid, is pumped around these fibers. The fibers filter waste and extra fluid from the patient's blood into the solution.

The complaint maintains that the dialyzer used during the decedent's last treatment was defective and caused his wrongful death. Plaintiff seeks to compensate a class of all persons who suffered injury or death as a result of using the Baxter dialyzers.

The complaint was filed by Kenneth B. Moll, Hal J. Kleinman and Sonia S. Kinra of Kenneth B. Moll & Associates in Chicago.

Defendants are represented by John Thomas Hickey Jr., Alexander Dimitrief and Julie B. Ruder of Kirkland & Ellis in Chicago.

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