

Jury Awards \$1.87 Mil. in Carbon Monoxide Poisoning Suit

A Philadelphia jury has awarded \$1.87 million in the case of a Kyrgyz immigrant who died from carbon monoxide poisoning and whose estate alleged that emergency room physicians were negligent for failing to diagnose her carbon monoxide poisoning.

Koulmara Chrol, 44, of Cheltenham, Montgomery County, died Feb. 12, 2007, within two weeks of being found unconscious in her home, according to the plaintiff's pretrial memorandum in *Shatemirov v. Weber*. Chrol's husband, Henryk Chrol, and son, Bartosh Chrol, were found dead in the home. The family's furnace was choked with soot, which resulted in the emission of carbon monoxide in their home, according to court papers.

Jemal Shatemirov, Chrol's son and the administrator of her estate, alleged that Dr. Dana M. Weber and Dr. Mark Ulitsky were negligent for not recognizing Chrol's symptoms of carbon monoxide poisoning and failing to test her for exposure to carbon monoxide during two prior visits to Jeanes Hospital in Philadelphia Jan. 22, 2007, and Jan. 26, 2007. Shatemirov also visited Jeanes Hospital's emergency room Jan. 24, 2007, with the complaint of a headache.

Ulitsky was dismissed from the case before trial, according to interviews with plaintiff's and defense counsel.

The plaintiff's counsel, Andy S. Youman of Kline & Specter in Philadelphia, said Ulitsky was let out of the case for "tactical" reasons. Shatemirov would have testified that Ulitsky was aware his mother had been to the emergency room two days before his visit, while Ulitsky denied that, Youman said.

"It was going to be a credibility contest and we decided that the case against Dr. Weber was so strong that we didn't need to try to prove a he-said-she-said case against Dr. Ulitsky," Youman said.

If the plaintiff could not win the case against Weber and against Jeanes Hospital with vicarious liability, then the plaintiff could not win the case against Ulitsky, Youman added.

The jury decided 11-1 in favor of the plaintiffs and against defendants Weber and Jeanes Hospital, according to the verdict sheet. The jury awarded \$149,449 in wrongful death damages and \$1.72 million in survival action damages.

The jury deliberated well into a third day, said Ulitsky and Weber's defense counsel, Michael McGilvery of Young & McGilvery in King of Prussia, Pa.

Philadelphia Common Pleas Judge Patricia A. McInerney presided over the trial.

The tragedy of three people dying from carbon monoxide poisoning was overwhelming, McGilvery said, and it was also too much to overcome the fact that Chrol had visited the emergency room two times.

McGilvery said he did not talk to the jury. Youman said his co-counsel or he talked to two jurors, who said that Weber, the chair of the emergency room department, should have been setting an example by "doing everything an emergency room physician should be doing in the evaluation of a patient like this."

The jury asked if they could find in favor of Weber and against the hospital, which McGilvery said made him "think they were not highly critical of Dr. Weber."

The plaintiff also argued in court papers that Jeanes Hospital's headache form listed carbon monoxide exposure as a possible diagnosis.

Chrol's symptoms during her emergency room visit included headache, nausea, vomiting, sensitivity to light and dizziness, according to the plaintiff's papers.

Jeanes Hospital's own form indicates that, if a patient complains of a prolonged headache, the treating doctor should consider if the cause could be Lyme disease, head injury or carbon monoxide, Youman said.

Despite living two blocks away from Jeanes Hospital, Chrol had to go by ambulance for one of her hospital visits, Youman said.

Jeanes Hospital's pretrial memorandum, as well as the pretrial memorandum for Weber and Ulitsky, said that Chrol had a history of migraines.

The defense theory was "narrowed down to a pretty simplistic defense," McGilvery said. "When Mrs. Chrol presented to the emergency room she had a fever and chills," and fever and chills are not seen as often with carbon monoxide as they are with a viral infection.

Chrol also did not mention that Shatemiroy had been seen at the emergency room two days before her second emergency room visit, Weber and Ulitsky's pretrial memorandum said.

To the best of Weber's knowledge, only two people in the house were sick, while usually everyone in a home is sick when breathing carbon monoxide, McGilvery said.

McGilvery also said he raised the fact that Chrol's primary care physician, Dr. Alla Shpaner, saw Chrol between her emergency room visits and did not diagnose carbon monoxide poisoning.

Shpaner perceived that her patient's headaches were related to her hypertension, Weber and Ulitsky's pretrial memorandum said.

Youman said Shpaner was not sued because emergency room doctors are taught in their training to diagnose carbon monoxide poisoning. "It's one of those diagnoses you only get one chance of making. If you send them home back to the area of exposure, you may never see them again," Youman said.

"The problem with plaintiff's case is that it's entirely retrospective," the doctors' pretrial memorandum said. "The symptoms that these patients presented with are extremely common in the ER."

Plaintiff's co-counsel were Michael A. Trunk and Earlie H. Francis of Kline & Specter.

Jeanes Hospital's defense counsel was E. Chandler Hosmer III of Marshall Dennehey Warner Coleman & Goggin in King of Prussia.

A Temple University Health System spokeswoman declined comment, citing a policy to not comment on a matter in which post-trial motions will be filed.

Chrol, who immigrated to the United States in 1997, worked at Jeanes Hospital at a telemetry technician, according to court papers. •