

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

|   |   |                       |
|---|---|-----------------------|
| RANDI L. KUNNEMANN, as INDEPENDENT              | ) |                       |
| ADMINISTRATOR OF THE ESTATE OF                  | ) |                       |
| KARIN K. KUNNEMANN                              | ) |                       |
|   | ) |                       |
| PLAINTIFF                                       | ) | NO. 05-C03211         |
|   | ) |                       |
| vs.   | ) |                       |
|   | ) | Judge Castillo        |
|   | ) | Magistrate Judge Keys |
| JANSSEN PHARMACEUTICA PRODUCTS, L.P.,           | ) |                       |
| a New Jersey Corporation; and ALZA CORPORATION, | ) |                       |
| a Delaware Corporation                          | ) |                       |
|   | ) |                       |
| DEFENDANTS                                      | ) |                       |

**FIRST AMENDED COMPLAINT**

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Comes now the Plaintiff, Randi L. Kunnemann, Independent Administrator of the Estate of Karin K. Kunnemann and for her First Amended Complaint against the above named Defendants, Janssen Pharmaceutica Products, L.P.; and Alza Corporation, states as follows:

**DESCRIPTION OF PARTIES**

1. The Plaintiff, Randi L. Kunnemann, is an individual residing in Naperville, Illinois. She is the parent and Independent Administrator of the Estate of Karin K. Kunnemann (the "Estate").
2. The Defendant, Janssen Pharmaceutica Products, L.P., ("Janssen") is a New Jersey corporation with its principal office located at 1125 Trenton-Harbourton Road, Titusville, New Jersey and does business in Naperville, Illinois and nationwide as the marketer and distributor of the Duragesic patch at issue in this litigation. Janssen placed the patch in the



stream of commerce resulting in its sale to Karin K. Kunnemann. The Service of Process Agent is The Corporation Company, c/o The Corporation Company, 30600 Telegraph Road, Bingham Farms, Michigan 48025.

3. The Defendant, Alza Corporation (“Alza”), is a Delaware corporation with its primary office located at 1900 Charleston Road, P.O. Box 7210, Mountain View, California 94039-7210. Alza manufactured the Duragesic patch at issue in this litigation. Alza placed the Duragesic patch at issue in the stream of commerce resulting in its sale to Ms. Kunnemann. The Service of Process Agent is CT Corporation System, 818 West Seventh Street, Los Angeles, California 90017.

#### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction over all of the parties pursuant to 28 USCA Section 1332.

5. Each Defendant has a primary place of business and is incorporated in other states, though each conducts business in the State of Illinois.

6. Defendants Janssen and Alza are subject to this Court’s jurisdiction by virtue of the fact that they manufactured, marketed, and placed in the stream of commerce the Duragesic patch purchased by Ms. Kunnemann in Illinois.

7. The Plaintiff and the Defendants citizenship is diverse as referenced in the foregoing paragraphs, and the amount in controversy exceeds \$75,000.

#### **GENERAL ALLEGATIONS**

8. Beginning in January, 1995, Karin K. Kunnemann, suffered from severe and chronic pain which required extensive medical intervention. As a result, decedent sought

treatment with numerous physicians, who treated her with numerous pain medications through and including the date of her death on June 8, 2004.

9. Despite her severe pain, Ms. Kunnemann had been employed, and planned to continue working.

10. On June 6, 2004, upon discharge from the hospital, Ms. Kunneman was prescribed a Duragesic Patch, 100 mcg, to relieve her chronic pain. The patch was placed on Ms. Kunneman at 6:06 A.M. Only one patch was applied.

11. The next day, June 7, 2004, Ms. Kunneman appeared very tired, and went to lie down at approximately 11:00 A.M. Her mother checked on her throughout the day and night, and believed Ms. Kunneman to be sleeping.

12. On the morning of June 8, 2004, Ms. Kunneman's mother attempted to wake her daughter, and when she could not be awakened, called 911.

13. Ms. Kunneman was pronounced dead on June 8, 2004, and subsequent autopsy confirmed that the death was caused by improper delivery of Fentanyl and Fentanyl toxicity, with a Fentanyl blood concentration of 5.82 ng/ml, which is more than 50% greater than the usual higher end of the serum concentration, as testified to by employees of Alza.

14. Ms. Kunnemann and her family did not know, nor could they have reasonably discovered, that the Duragesic patch was defective until it caused her death on the morning of June 8, 2004.

15. Ms. Kunnemann's untimely death deprived her of the ongoing love, society, companionship, and the support that she enjoyed with her family. Without limitation of the foregoing, in connection with counts and claims set forth hereafter, Plaintiff claims any and all rights to which she would be entitled including any rights under the doctrines of loss consortium

and/or loss of companionship and society and further preserves any claims arising from her daughter's death. Plaintiff seeks full and fair damages for the pecuniary, economic/income, and lost economic support to which she is entitled.

**COUNT I – PRODUCT LIABILITY – STRICT LIABILITY**

16. Plaintiff repeats and realleges the foregoing paragraphs, as if fully set forth herein.

17. Plaintiff used the Duragesic patch for the purpose of pain management, the usual, foreseeable, and intended use of Defendants' product.

18. Defendants are commercial suppliers. Alza is the manufacturer of the Duragesic patch, as defined by 735 ILCS 5/2-2101. Janssen is the distributor of the Duragesic patch, placing them into the stream of commerce to be purchased and used by consumers nationwide, as defined by 735 ILCS 5/2-2101.

19. Defendants had a duty to design, manufacture, distribute and sell the Duragesic patch so that it was neither defective, nor unreasonably dangerous when put to the use for which it was designed, manufactured distributed or sold.

20. At the time the Duragesic patch left the possession of Defendants and at the time it entered into the stream of commerce, it was in an unreasonably dangerous and defective condition.

21. As a direct and proximate result of the foregoing, the Duragesic patch did cause Plaintiff's decedent to suffer a fatal overdose.

22. As a result of the foregoing, Karin Kunnemann received a fatal overdose of fentanyl released by the Defendants' product. Plaintiff is therefore entitled to a judgment awarding special, general, pecuniary and loss of companionship and society damages to and

among the individuals as set forth above, in an amount to be determined at trial as set forth in the Prayer for Relief.

23. Additionally, Defendants' conduct is so outrageous as to constitute ill will, bad motive and reckless indifference to the interests of consumers. Plaintiff is therefore entitled to punitive damages. All of the Defendants are liable to Plaintiff jointly and severally for all general, special and equitable relief to which the Plaintiff is entitled by law.

**COUNT II – PRODUCT LIABILITY - NEGLIGENCE**

24. Plaintiff repeats and realleges the foregoing paragraphs, as if fully set forth herein.

25. Defendants were engaged in the business of formulating and preparing the Duragesic patch. Defendants owed Plaintiff the duty of care regarding design and manufacture of the Duragesic patch so that it was neither defective, nor unreasonably dangerous when put to the use for which it was designed, manufactured distributed or sold.

26. There were defects in the manufacture and design of the Duragesic patch, which subsequently led to Karin Kunnemann's death.

27. Defendants knew or should have known that Plaintiff would reasonably rely on its proper manufacture in use of the Duragesic patch.

28. Defendants breached their duty to Plaintiff by failing to detect a design or manufacture defect.

29. Defendants breached their duty to Plaintiff by supplying the defective Duragesic patch.

30. Plaintiff has relied on Defendants by use of the Duragesic patch. The defects alleged ordinarily would not happen in the absence of negligence. Defendants had exclusive control over the product at all relevant times.

31. By reason of *res ipsa loquitur*, Defendants were negligent in supplying the defective Duragesic patch.

32. As a result of the foregoing, Karin Kunnemann received a fatal overdose of fentanyl released by the Defendants' product. Plaintiff is therefore entitled to a judgment awarding special, general, pecuniary and loss of companionship and society damages to and among the individuals as set forth above, in an amount to be determined at trial as set forth in the Prayer for Relief.

33. Additionally, Defendants' conduct is so outrageous as to constitute ill will, bad motive and reckless indifference to the interests of consumers. Plaintiff is therefore entitled to punitive damages. All of the Defendants are liable to Plaintiff jointly and severally for all general, special and equitable relief to which the Plaintiff is entitled by law.

**COUNT III – BREACH OF EXPRESS WARRANTY**

34. Plaintiff repeats and realleges the foregoing paragraphs, as if fully set forth herein.

35. The Duragesic patch used by Plaintiff came with an express written warranty stating that the Duragesic patch including but not limited to the following statements:

DURAGESIC is a thin, adhesive, rectangular patch that is worn on your skin. DURAGESIC delivers a strong pain-relieving medicine called "fentanyl" through the skin and into the bloodstream. Through this time-released transdermal system, each DURAGESIC patch provides up to 3 days (72 hours) of pain relief. It should only be used to relieve moderate-to-severe chronic pain.

\* \* \*

The unique design of the DURAGESIC patch allows tiny amounts of fentanyl to be delivered into the body over a period of up to 3 days (72 hours) per patch.

What allows this process to happen is that the sticky side of each patch is made of a special material, called a semi-permeable membrane, which allows the medication to pass through it at a controlled rate.

When the patch is applied to the skin, the fentanyl inside the patch slowly moves through the membrane and becomes absorbed by the skin underneath. The fentanyl concentrates in the upper skin layers in what is called a depot. Once the depot is formed, the fentanyl is carried by the bloodstream to the central nervous system a little bit at a time, where it works to relieve pain.

Ex. D, (<http://www.duragesic.com/patient/about/faqs.jsp>, (2004 version).

36. Defendants breached their warranty by manufacturing, marketing, and distributing the Duragesic patch in a condition such that they do not perform the necessary functions of pain management and time released delivery.

37. Defendant has received timely notice of the breach of warranty alleged herein.

38. Defendant has essentially further breached its warranty by not instituting a complete recall on February 16, 2004 of all implicated lots, but claiming that the recall was limited to a single lot.

39. At all relevant times, there was in full force and effect the Illinois Commercial Code, 810 ILCS § 5/1-101 et seq. (the “Code”).

40. Section 2-313 of the Code provides, in relevant part:

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

41. Defendant Janssen’s web page, FAQs states:

6. What are the advantages of the DURAGESIC patch?

DURAGESIC is convenient. Each DURAGESIC patch gives you up to 3 days (72 hours) of effective pain relief. That means you should only have to change your DURAGESIC patch every 3 days instead of having to stop your daily activities to take a pill every 4, 6, 8, or 12 hours.

DURAGESIC also give you consistent pain relief. The slow release of fentanyl into the bloodstream minimizes the peaks and valleys in pain relief found with other pain medications. This means you may avoid some of the problems that can occur with other pain therapies, such as having your pain come back several times a day before you take the next dose.

DURAGESIC is generally well tolerated. Because DURAGESIC enters the body through the skin instead of through the stomach, it may lessen local side effects in the digestive system. For more information on the side effects, please see "What are important side effects and precautions associated with DURAGESIC?"

Studies have shown that patients prefer DURAGESIC over the other short-acting and long-acting opioid pain therapies:

- In clinical studies, 75% of people using DURAGESIC reported excellent or good responses to therapy versus only 42.5% on their previous opioid medication.\*
- In another trial of 504 people, the largest cross-sectional study to date comparing 2 opioids, patients were significantly more satisfied with DURAGESIC than with sustained-release oral morphine (p=0.035).

(<http://www.duragesic.com/patient/about/faqs.jsp>, (2004 version).

42. Defendant breached this express warranty by distributing the Duragesic patch which did not safely deliver the medication as warranted.

43. Plaintiff has been damaged by Defendants' breach of their express warranties and therefore is entitled to damages under the following sections of the code:

- (a) 2-715 for incidental and consequential damages, including "injury to person...proximately resulting from any breach of warranty." 2-715(2)(b); and



- (b) 2-721 for material misrepresentation, which includes all remedies available under the code for non-fraudulent breach.

**COUNT IV – BREACH OF IMPLIED WARRANTY**

- 44. Plaintiff repeats and realleges the foregoing paragraphs, as if fully set forth herein.
- 45. At all relevant times there was in full force and effect the Illinois Commercial Code, 810 ILCS § 5/1-101 et seq. (“the Code”).
- 46. Section 2-314 of the Code provides, in relevant part:
  - (1) Unless excluded or modified (Section 2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.  
.....
  - (2) Goods to be merchantable must be at least such as:
    - (a) pass without objection in the trade under the contract description;  
and  
.....
    - (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

47. By failing to properly deliver pain medication, the goods would not pass without objection in the trade under the contract description.

48. Defendants breached the implied warranty of merchantability in that the Duragesic patches were not in a merchantable condition when sold or at any time thereafter and were not fit for the ordinary purpose for which such goods are used in that they did not properly deliver pain medication as warranted and failed to function appropriately.

49. Plaintiff has been damaged by Defendant’s breach of its implied warranties and therefore is entitled to damages under the following sections of the Code:

- (a) 2-715 for incidental and consequential damages, including "injury to person...proximately resulting from any breach of warranty." 2-715(2)(b); and
- (b) 2-721 for material misrepresentation, which includes all remedies available under the code for non-fraudulent breach.

**COUNT V**

**VIOLATION OF ILLINOIS CONSUMER FRAUD & DECEPTIVE**

**BUSINESS PRACTICES ACT**

- 50. Plaintiff repeats and realleges the foregoing paragraphs, as if fully set forth herein.
- 51. At all relevant times, there was in full force and effect the Illinois Consumer Fraud Deceptive Business Practices Act, 815 ILCS 505/1, *et seq* ("Act).

- 52. Section 2 of the Act, 815 ILCS 505/2 provides in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the 'Uniform Deceptive Trade Practices Act', approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

- 53. Section 2, 815 ILCS 510/2 provides in pertinent part:

§ 2. A person engages in a deceptive trade practice when, in the course of his business, vocation, or occupation, he:

\* \* \*

- (5) represents that goods or services have...characteristics,...uses benefits or quantities that they do not have;

\* \* \*

- (12) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

54. In order to prevail in an action under this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding. This Section does not affect unfair trade practices otherwise actionable at common law or under other Illinois statutes.

55. Section 10a of the Consumer Fraud Act, states, in pertinent part:

- (a) Any person who suffers damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual damages or any other relief which the court deems proper. Proof of public injury, a pattern, or an effect on consumers generally shall not be required.

\* \* \*

- (c) Except as provided in subsection (f), (g) and (h) of this Section, in any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

56. Defendant's misrepresentations, as detailed above and continued within documents produced during discovery, violate the Act.

#### **COUNT VI-UNJUST ENRICHMENT**

57. Plaintiff repeats and realleges the foregoing paragraphs, as if fully set forth herein.

58. As the intended and expected result of their manufacturing, creating, designing, testing, labeling, packaging, supplying, advertising, marketing, selling, warning or distributing Duragesic in interstate commerce, Defendants have profited and benefited from the Plaintiff's use of Duragesic as testified by Defendants' employees.

59. Defendants have voluntarily accepted and retained these profits and benefits, derived from the Plaintiff, with full knowledge and awareness that, as a result of Defendants'

wrongdoings, Plaintiff was not receiving a product of the quality, nature or fitness that had been represented by Defendants or that the Plaintiff, as a reasonable consumer, expected.

60. Allowing the Defendants to retain such a benefit gained from such conduct violates the fundamental principles of justice, equity and good conscience.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Randi L. Kunnemann, Independent Administrator of the Estate of Karin K. Kunnemann, requests that judgment be entered against the above-named Defendants, Janssen Pharmaceutica Products, L.P., and Alza Corporation, as follows:

A. For general damages, including loss of financial support and all pecuniary injury suffered by Plaintiff as a consequence of the death of Karin K. Kunnemann;

B. For past medical bills and funeral expenses associated with the death and autopsy of Karin K. Kunnemann;

C. For special damages to the Plaintiff, including but not limited to loss of past wages and future earning capacity and income and any pain and suffering as a result of the injuries and death of Karin K. Kunnemann;

D. For any all damages Plaintiff is entitled to pursuant to the Wrongful Death Act, 740 ILCS 180/1 *et seq.*

E. For statutory damages set forth above;

F. For punitive damages;

G. For Plaintiff's reasonable attorneys' fees, court costs, and interest of items of special damages; and

H. For any and all other relief which the Court shall deem proper.

**DEMAND FOR JURY TRIAL**

Plaintiff specifically requests and demands a trial by jury on all issues alleged herein.

DATED this 13th day of April, 2007.

Respectfully submitted,

/s/ Sheila P. Hiestand

Sheila P. Hiestand  
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and

Michael D. Poulos  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RANDI L. KUNNEMANN, as INDEPENDENT )  
ADMINISTRATOR OF THE ESTATE OF )  
KARIN K. KUNNEMANN )

PLAINTIFF )

vs. )

JANSSEN PHARMACEUTICA PRODUCTS, L.P., )  
a New Jersey Corporation; and ALZA CORPORATION, )  
a Delaware Corporation )

DEFENDANTS )

NO. 05-C03211

Judge Castillo  
Magistrate Judge Keys

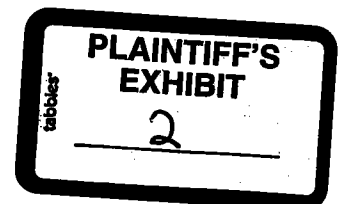
**PLAINTIFF'S ANSWERS TO DEFENDANT**  
**ALZA CORPORATION'S FIRST SET OF**  
**INTERROGATORIES**

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Comes now the Plaintiff, Randi L. Kunnemann, by counsel, and for her Answers to Defendant Alza Corporation's First Set of Interrogatories as follows:

**INTERROGATORY NO. 1:** State Plaintiff's and Karin K. Kunnemann's ("Decedent") dates of birth, places of birth, and Social Security numbers.

**ANSWER:** Plaintiff, Randi Lynn Hill Kunnemann, May 6, 2952, Gary, IN, 316-48-0672 and Karin Kristina Kunnemann, May 8, 1977, Hammond, IN and 314-84-9604.



**INTERROGATORY NO. 2:** List all marriages of Decedent, including the date and place of each marriage, the full name of each spouse, the date each marriage terminated (if applicable), and how each marriage was terminated.

**ANSWER:** Decedent was never married.

**INTERROGATORY NO. 3:** State the name, address, and date of birth of each of Decedent's children, if any, whether natural or adopted.

**ANSWER:** Decedent has no children.

**INTERROGATORY NO. 4:** Set forth in detail Decedent's educational history starting with high school, by identifying the name of every educational institution Decedent attended, dates of attendance, dates of graduation, and degrees received, if applicable.

**ANSWER:** Decedent graduated in 1995 from Waubonsie Valley High School with a general education. Decedent attended Valparaiso University (1995-1996). No degree was received.

**INTERROGATORY NO. 5:** Set forth in detail Decedent's work history for the 15 years preceding her death, by stating the name of each employer, the inclusive dates of each such employment, her job title and the nature of the work she performed.

**ANSWER:** Decedent's work history is as follows: Self employed, 1989-2004, child services and cared for children; Brookdale Racquet Club, Inc., PO Box 2792, Naperville, IL 60567-2792, 2000-2003, child services and cared for children; Right Temporaries, 53 West Jackson Blvd., Chicago, IL 60604, 1999, secretary and secretarial duties and Walgreen Company, Illinois, 200 Wilmot Road, Deerfield, IL 60015, 1997, pharmacy technician and assisted the pharmacist.

**INTERROGATORY NO. 6:** State the amount of Decedent's salary, bonus and/or [or] other compensation for the 5 years preceding her death.

**ANSWER:** Plaintiff refers the Defendant to the attached Decedent's tax returns within her possession.

**INTERROGATORY NO. 7:** With regard to any claim or lawsuit (other than this lawsuit) which Decedent ever filed or was named as a party, including any workers' compensation claim, criminal proceeding, small claims lawsuit, bankruptcy proceeding, child custody proceeding or divorce proceeding, state:

- (a) the nature of the proceeding, claim or injury;
- (b) the identify of all other parties to the claim or lawsuit;
- (c) the outcome of the proceeding (e.g. conviction, plea, settlement, recovery of damages); and
- (d) the case number or claim number of the claim or lawsuit and the agency or court jurisdiction where the claim or lawsuit was filed or asserted.

**ANSWER:** Decedent was never a party to any claim or lawsuit.

**INTERROGATORY NO. 8:** With regard to any claim or lawsuit (other than this lawsuit) which Plaintiff Randi L. Kunnemann has ever filed or was named as a party, including any workers' compensation claim, criminal proceeding, small claims lawsuit, bankruptcy proceeding, child custody proceeding or divorce proceeding, state:

- (a) the nature of the proceeding, claim or injury;
- (b) the identity of all other parties to the claim or lawsuit;
- (c) the outcome of the proceeding (e.g. conviction, plea, settlement, recovery of damages); and
- (d) the case number of claim number of the claim or lawsuit and the agency or court jurisdiction where the claim or lawsuit was filed or asserted.



ANSWER: Plaintiff states that no claims were ever filed.

INTERROGATORY NO. 9: Identify each and every physician or healthcare provider who examined Decedent, or provided any care and treatment to her, at any time from 1994 through the date of Decedent's death by stating the following:

- (a) The name, address and specialty of each physician or other healthcare provider;
- (b) The nature of the condition, illness, injury or disease for which care and treatment was rendered; and
- (c) The specific dates on which or the periods of time during which the same were rendered.

ANSWER: Plaintiffs object that this interrogatory seeks information that is not relevant to the litigation or calculated to obtain admissible evidence. Plaintiffs object that this interrogatory is overly broad and not intended to obtain information relevant to the pending proceeding. In addition, Plaintiff objects that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for the party serving the interrogatory as for the party served. Plaintiff refers the Defendant to the decedent's medical records and documents produced herewith in response to the Defendant's First Set of Document Requests. Notwithstanding to the foregoing objection, Decedent received medical care and/or treatment from the following providers: Timothy Wall, M.D., Pediatric Health Associates, 636 Raymond Drive, Ste. 205, Naperville, IL 60563; Patricia J. Andrise, Ph.D., Hinsdale Psychological Resources, Ltd., 333 Chestnut Street, Ste. 206, Hinsdale, IL 60521; Richard R. Ballinger, Sr. Deputy, Dupage County Corner's Office, 414 North County Farm Road, Wheaton, IL 60187; Jeff Harkey, M.D., Dupage County Corner's Office, 414 North County Farm Road, Wheaton, IL 60187; Hematology-Oncology Consultants, Ltd., 100 Spalding Drive, Ste. 102, Naperville, IL 60540; Laboratory Corporation of America, 321 West Lake Street, Ste. C, Elmhurst, IL 60126;

Rehabilitation Medicine Clinic, Inc., Division of Marianjoy RehabLink, 26 W 171 Roosevelt Road, PO Box 389, Wheaton, IL 60189; Medical Associates of Naperville, 636 Raymond Drive, Naperville, IL 60563; Genesis Clinic Services, Steven M. Prinz, M.D., 1725 S. Naperville Road, Ste. 206, Wheaton, IL 60187; Rodrigo M. Ubilluz, M.D., 4121 Fairview Avenue, Ste. 103, Downers Grove, IL 60515; Lawrence Kayton, M.D., 120 Oakbrook Center Ste 720, Oak Brook, IL 60523; Mayo Clinic, 200 First Street SW, Rochester, MN 55905; AIT Laboratories, 2265 Executive Drive, Ste. A, Indianapolis, IN 46241; Michael N. Skaredoff, M.D., Physician's Pain Management Center, 10411 Corporate Drive, Ste. 108, Pleasant Prairie, WI 53158-1611; Francine P. Long, M.D., 3033 Ogden Avenue, Lisle, IL 60532; Harold L. Mozwecz, M.D., 100 Spalding Drive, Naperville, IL 60540; Kaven Safavi, M.D., 30 Stratford Drive, Bloomingdale, IL 60108; Syed Quadri, M.D., 30 Stratford Drive, Bloomingdale, IL 60108; Healthspring Medical Group, Steven Hanauer, 5841 Maryland, Chicago, IL 60637; Rush Pediatric Medical, 630 S. Hermitage, Chicago, IL 60612; Susan Fullerton, M.D., 150 Winfield Road, Winfield, IL 60190; Robert Felice, M.D., 1280 Iroquois Drive, Naperville, IL 60563; Gloria Caruson, M.D., 471 West Army Trail Road, #106, Bloomingdale, IL 60108; Rheumatology Associates, 1725 W. Harrison Street, Chicago, IL 60612; Kim Waterous, M.D., Fox Valley Institute, 636 Raymond Avenue, #306, Naperville, IL 60563; Westridge Court Chiropractic, 2835 Aurora Avenue, Naperville, IL 60563; Holistic Chiropractic, 620 Pebblewood Lane #112, Naperville, IL 60563; Midwest Heart Specialist, 801 South Washington, Naperville, IL 60563; Family First Dental, 1224 W. Ogden Avenue, Naperville, IL 60563; Fred Schultz, M.D., Center for Health & Healing, 2150 Manchester Road, Wheaton, IL 60187; Richard Gelband, D.C., Gelband Natural Health & Chiropractic, 603 E. Diehl Road, #135, Naperville, IL 60563; and any and all persons identified in the Decedent's medical records; and any and all employees of the physician or

health care providers including but not limited to the nursing staff and hospital staff. Plaintiff will rely upon all health care providers of the Decedents. Additional information has been requested and this response will be supplemented once received.

Signature of Attorney for Objection: \_\_\_\_\_

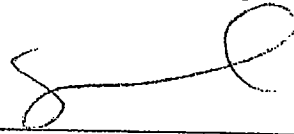
**INTERROGATORY NO. 10:** Identify each and every hospital where Decedent received medical examinations or other care and treatment at any time, by stating the following:

- (a) The name and address of each hospital;
- (b) The admission and discharge date for each inpatient confinement;
- (c) The date of each emergency room treatment or outpatient treatment; and
- (d) The nature of the condition, illness, injury or disease for which Decedent was treated.

**ANSWER:** Plaintiffs object that this interrogatory seeks information that is not relevant to the litigation or calculated to obtain admissible evidence. Plaintiff objects that this interrogatory is overly broad and not intended to obtain information relevant to the pending proceeding. In addition, Plaintiff objects that the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for the party serving the interrogatory as for the party served. Plaintiff refers the Defendant to the decedent's medical records and documents produced herewith in response to the Defendant's First Set of Document Requests. Notwithstanding to the foregoing objection, Decedent received medical care and/or treatment from the following providers: Children's Memorial Hospital, 2300 Children's Plaza Box 11, Chicago, IL 60614; Provena Mercy Center Hospital, 1325 North Highland Avenue, Aurora, IL 60506; Weiss Memorial Hospital, 4646 N. Marine Drive, Chicago, IL 60640; Loyola University Health System, Loyola University Medical Center, 2160 S. First Avenue, Maywood, IL 60153; Alexian Brothers Hospital, 800 Biesterfield Road, Elk Grove Village, IL 60007; Elmhurst

Memorial Hospital, 200 Berteall Avenue, Elmhurst, IL; Good Samaritan Hospital, 3815 Highland Avenue, Downers Grove, IL 60515; Linden Oaks Hospital at Edward, 801 S. Washington, Naperville, IL 60540; Hinsdale Hospital, 120 North Oak Street, Hinsdale, IL 60521; Northwestern Memorial Hospital, 251 East Huron Street, Chicago, IL 60611; Rush-Presbyterian-St. Luke's Medical Center, 1725 West Harrison Street, Chicago, IL 60612-3824; Central DuPage Hospital, 25 North Winfield Road, Winfield, IL 60190; and any and all persons identified in the Decedent's medical records; and any and all employees of the hospitals including but not limited to the nursing staff and hospital staff. Plaintiff will rely upon all health care providers of the Decedents. Additional information has been requested and this response will be supplemented once received.

Signature of Attorney for Objection: \_\_\_\_\_



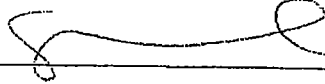
**INTERROGATORY NO. 11:** Please state the name and address of each and every person who has any knowledge relating to the occurrences upon which you base your claims in this lawsuit, and any damages that you allege.

**ANSWER:** Plaintiffs object that this interrogatory calls for the disclosure of privileged information and/or information subject to the attorney-work product doctrine. Without waiving the objection, at this time, Plaintiffs are uncertain which persons they intend to call as witness at the trial of this matter; Plaintiffs believe that the following persons may have information relevant to the merits of this action: The Plaintiff, Randi Kunnemann, 1517 Brookdale Road, Naperville, IL 60563; Mark Kunnemann, 1517 Brookdale Road, Naperville, IL 60563; Jeff Kunnemann (Karin's brother); Evelyn Hill (Karin's grand-mother); Al and Beth Kunnemann (Karin's grand parents); Kjersti Paulding; Lisa Gierczak; Caryn Carlson; Pauline Harding, M.D., 27W281 Geneva Road, Winfield, IL 60190; Alice Rupp, M.D., 636 Raymond Avenue,

Naperville, IL 60563; Timothy Wall, M.D., Pediatric Health Associates, 636 Raymond Drive, Ste. 205, Naperville, IL 60563; Patricia J. Andrise, Ph.D., Hinsdale Psychological Resources, Ltd., 333 Chestnut Street, Ste. 206, Hinsdale, IL 60521; Richard R. Ballinger, Sr. Deputy, Dupage County Corner's Office, 414 North County Farm Road, Wheaton, IL 60187; Jeff Harkey, M.D., Dupage County Corner's Office, 414 North County Farm Road, Wheaton, IL 60187; Hematology-Oncology Consultants, Ltd., 100 Spalding Drive, Ste. 102, Naperville, IL 60540; Laboratory Corporation of America, 321 West Lake Street, Ste. C, Elmhurst, IL 60126; Rehabilitation Medicine Clinic, Inc., Division of Marianjoy RehabLink, 26 W 171 Roosevelt Road, PO Box 389, Wheaton, IL 60189; Medical Associates of Naperville, 636 Raymond Drive, Naperville, IL 60563; Genesis Clinic Services, Steven M. Prinz, M.D., 1725 S. Naperville Road, Ste. 206, Wheaton, IL 60187; Rodrigo M. Ubilluz, M.D., 4121 Fairview Avenue, Ste. 103, Downers Grove, IL 60515; Lawrence Kayton, M.D., 120 Oakbrook Center Ste 720, Oak Brook, IL 60523; Mayo Clinic, 200 First Street SW, Rochester, MN 55905; AIT Laboratories, 2265 Executive Drive, Ste. A, Indianapolis, IN 46241; Michael N. Skaredoff, M.D., Physician's Pain Management Center, 10411 Corporate Drive, Ste. 108, Pleasant Prairie, WI 53158-1611; Francine P. Long, M.D., 3033 Ogden Avenue, Lisle, IL 60532; Harold L. Mozwecz, M.D., 100 Spalding Drive, Naperville, IL 60540; Kaven Safavi, M.D., 30 Stratford Drive, Bloomingdale, IL 60108; Syed Quadri, M.D., 30 Stratford Drive, Bloomingdale, IL 60108; Healthspring Medical Group, Steven Hanauer, 5841 Maryland, Chicago, IL 60637; Rush Pediatric Medical, 630 S. Hermitage, Chicago, IL 60612; Susan Fullerton, M.D., 150 Winfield Road, Winfield, IL 60190; Robert Felice, M.D., 1280 Iroquois Drive, Naperville, IL 60563; Gloria Caruson, M.D., 471 West Army Trial Road, #106, Bloomingdale, IL 60108; Rheumatology Associates, 1725 W. Harrison Street, Chicago, IL 60612; Kim Waterous, M.D., Fox Valley Institute, 636 Raymond

Avenue, #306, Naperville, IL 60563; Westridge Court Chiropractic, 2835 Aurora Avenue, Naperville, IL 60563; Holistic Chiropractic, 620 Pebblewood Lane #112, Naperville, IL 60563; Midwest Heart Specialist, 801 South Washington, Naperville, IL 60563; Family First Dental, 1224 W. Ogden Avenue, Naperville, IL 60563; Fred Schultz, M.D., Center for Health & Healing, 2150 Manchester Road, Wheaton, IL 60187; Richard Gelband, D.C, Gelband Natural Health & Chiropractic, 603 E. Diehl Road, #135, Naperville, IL 60563; and any and all persons identified by the Defendants; and any and all employees of the Defendants. This list is not exhaustive and Plaintiffs reserve the right to supplement this answer as discovery continues.

Signature of Attorney for Objection: \_\_\_\_\_



**INTERROGATORY NO. 12:** If you have entered into any release, covenant not to sue, covenant not to enforce judgment, and/or settlement agreement of any kind with any individual or entity with respect to the subject matter of this litigation, identify the settling individual or entity and the terms of the settlement, including the amount.

**ANSWER:** No such documents exist.

**INTERROGATORY NO. 13:** If Plaintiff Randi L. Kunnemann, or any dependent of the Decedent, has received any medical, psychological, social, or other treatment or therapy as a result of the events alleged in Plaintiff's Complaint, state:

- (a) the name and address of each health care provider or professional; and
- (b) the specific dates on which or periods of time during which such treatment or therapy was rendered.

**ANSWER:** Plaintiff states that she has been treating with Pauline Harding, M.D., 27 W 281 Geneva Road, Winfield, IL 60190.

This answer will be supplemented as additional information becomes available.

**INTERROGATORY NO. 14:** State the name and address of all pharmacies that filled prescriptions for Decedent from 1994 to present.

**ANSWER:** Decedent utilized the following pharmacies from 1994 to present: Walgreen's, 612 Raymond Avenue, Naperville, IL 60563, Target Pharmacy, 601 S. County Farm Road, Wheaton, IL 60187 and Martin Avenue Pharmacy, 10 West Martin Avenue, Naperville, IL 60563.

**INTERROGATORY NO. 15:** Identify the product, by product code and lot number, which you claim caused or contributed to Decedent's injuries (hereinafter, the product at issue).

**ANSWER:** Plaintiff does not have any portion of the Duragesic® patch used by Decedent in their possession. Plaintiff states that the Duragesic® patch is being maintained by Dr. Jeff Harkey of the DuPage County Coroner's Office, 414 North County Farm Road, Wheaton, IL 60187.

**INTERROGATORY NO. 16:** State whether all or any portion of the product at issue in Plaintiff's Complaint and the package(s) or container(s) in which it was supplied are within the custody, possession or control of Plaintiff or her attorneys, identifying the name of the person having custody, possession or control of this drug, its package, container or any portion thereof, and describing any identifying marks or numbers on the drug, package or container.

**ANSWER:** Plaintiff does not have any portion of the Duragesic® patch used by Decedent in their possession. Plaintiff states that the Duragesic® patch is being maintained by Dr. Jeff Harkey of the DuPage County Coroner's Office, 414 North County Farm Road, Wheaton, IL 60187.

**INTERROGATORY NO. 17:** If all or any portion of the product at issue in Plaintiff's Complaint and/or its package(s) or container(s) are not in the possession, custody or control of Plaintiff or her attorneys, state with particularity all of your efforts to obtain any or all of the retained portion of the product at issue, including dates of inquiry and names and addresses of persons contacted.

**ANSWER:** Plaintiff does not have any portion of the Duragesic® patch used by Decedent in their possession. Plaintiff states that the Duragesic® patch is being maintained by Dr. Jeff Harkey of the DuPage County Coroner's Office, 414 North County Farm Road, Wheaton, IL 60187.

**INTERROGATORY NO. 18:** With respect to any test or analysis performed on any blood and/or tissue samples taken from Decedent after Decedent's death:

- (a) Describe each test or analysis that was conducted;
- (b) For each such test or analysis, state the date and site, the steps or methods required in conducting each, and
- (c) The substance of each result, conclusion or report rendered with respect to each.

**ANSWER:** Plaintiff refers the Defendant to the postmortem exam and inquisition report performed by DuPage County Coroner's Office, Wheaton, IL and the postmortem toxicology report performed by the America Institute of Toxicology, Indianapolis, IN.

**INTERROGATORY NO. 19:** Identify each and every aspect of the product at issue which you contend was defectively designed.

**ANSWER:** Objection, based upon attorney client privilege and work product doctrine. Without waiving this objection, Plaintiff states that she has not yet determined which experts she intends to call as witnesses at the trial of this matter, and the above interrogatory requests information which is the subject of expert testimony. Plaintiff agrees to comply with the

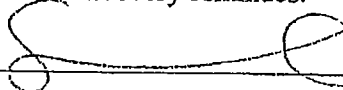


previously ordered discovery deadlines and any further orders of this Court, as well as FRCP 26. Without waiving any of the previous objections, Plaintiff states that the product at issue was defective in that it allowed the fentanyl which was stored within the patch to be dispersed at a rate which far exceeded the safe distribution of same. As such it delivered a toxic and fatal amount of fentanyl to Ms. Kunnemann in the period of June 6, 2004 through June 8, 2004.

Even though it was designed to release a specific quantity of fentanyl over a given period of time the Duragesic® patch worn by Ms. Kunnemann was defective and did not perform in accordance with proper specifications and design parameters and as a result delivered a fatal dose of fentanyl that proximately caused Ms. Kunnemann's injuries and subsequent death.

The design of the fentanyl patch itself was an improper design which such design allowed fentanyl, an extremely powerful and potential lethal drug, to be released outside of the patch, and such design defect was the proximate cause of Ms. Kunnemann's injuries and subsequent death. Plaintiff reserves the right to supplement this answer as discovery continues.

Signature of Attorney for Objection: \_\_\_\_\_



**INTERROGATORY NO. 20:** Identify each and every aspect of the product at issue which you contend was defectively manufactured.

**ANSWER:** Objection, based upon attorney client privilege and work product doctrine. Without waiving this objection, Plaintiff states that she has not yet determined which experts she intends to call as witnesses at the trial of this matter, and the above interrogatory requests information which is the subject of expert testimony. Plaintiff agrees to comply with the previously ordered discovery deadlines and any further orders of this Court, as well as FRCP 26. Without waiving any of the previous objections, Plaintiff states that the product at issue was defective in that it allowed the fentanyl which was stored within the patch to be dispersed at a

rate which far exceeded the safe distribution of same. As such it delivered a toxic and fatal amount of fentanyl to Ms. Kunnemann in the period of June 6, 2004 through June 8, 2004.

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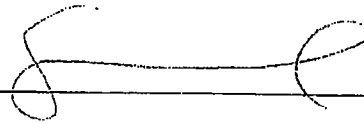
Signature of Attorney for Objection: \_\_\_\_\_

**INTERROGATORY NO. 21:** State each fact upon which you base your contention that a defective condition existed in the product at issue at the time it left control of the manufacturer and, for each defective condition, state each fact upon which you base your contention that such defective condition caused your injuries.

**ANSWER:** Objection, based upon attorney client privilege and work product doctrine. Without waiving this objection, Plaintiff states that she has not yet determined which experts she intends to call as witnesses at the trial of this matter, and the above interrogatory requests information which is the subject of expert testimony. Plaintiff agrees to comply with the previously ordered discovery deadlines and any further orders of this Court, as well as FRCP 26. Without waiving any of the previous objections, Plaintiff states that the product at issue was placed in the stream of commerce and received by the Decedent in a sealed container that had not been altered in any way, shape or form after it left the manufacturing facility. Moreover, the

patch was not altered in any way after it was removed from its packaging by Decedent, and was placed upon the Decedent and utilized in complete compliance with its intended purposes and pursuant to the specifications of Defendants. Finally, Plaintiff reserves the right to supplement this answer as discovery continues.

Signature of Attorney for Objection: \_\_\_\_\_



**INTERROGATORY NO. 22:** State each fact upon which you base your contention that a defective condition existed in the warnings or instructions on the product at issue and, for each defective condition, state each fact upon which you base your contention that such defective condition caused your injuries.

**ANSWER:** Objection, based upon attorney client privilege and work product doctrine. Without waiving this objection, Plaintiff states that she has not yet determined which experts she intends to call as witnesses at the trial of this matter, and the above interrogatory requests information which is the subject of expert testimony. Plaintiff agrees to comply with the previously ordered discovery deadlines and any further orders of this Court, as well as FRCP 26. Without waiving any of the previous objections, Plaintiff states that Defendants and their agents and employees failed to provide adequate warnings with the Duragesic® patches rendering them unreasonably dangerous and unfit for the ordinary purposes for which they were intended, in breach of warranty. This failure to warn includes but is not limited to: the failure to warn the consumer that there had been prior leaks with these patches; that Defendants knew or should have known of the defect and failed to issue appropriate recalls; that the risk of death as a result of these leaks was substantial; that the Defendants failed to issued appropriate “Black Box Warnings” in a timely fashion; that Defendants knew or should have known that the risk of leak was statistically relevant and required sufficient, clearly marked, visible and accessible warnings.

As a direct and proximate result of the Defendants' failure to warn, Ms. Kunnemann relied on using the Duragesic® patches, as she was caused to suffer a toxic overdose of the potent opioide fentanyl and suffered serious injury and subsequent death. Plaintiff agrees to supplement this answer as discovery continues.

Signature of Attorney for Objection: \_\_\_\_\_

**INTERROGATORY NO. 23:** Please state by category (e.g., medical expenses, prescriptions, funeral expenses, lost wages, pain and suffering, etc.) and amount all damages incurred by you or on your behalf as a result of the injuries alleged in Plaintiff's Complaint, including the reason(s) for each expense and the date on which each expense was incurred.

**ANSWER:** Plaintiff has requested the necessary information and this response will be supplemented once received.

Funeral Expenses:

|  |    |                 |
|--|----|-----------------|
| Friedrich Jones & Overman Funeral Home   | \$ | 9,441.25        |
| Concordia Ev. Luth. Cemetery Association | \$ | 1,850.00        |
| Luncheon for Funeral                     | \$ | 378.12          |
| Calumet Monument, Inc.                   | \$ | <u>1,503.98</u> |
| Total:                                   | \$ | 13,173.35       |

Plaintiffs intend to make a claim at trial for past funeral expenses and any past medical bills which may apply (currently estimated at \$13,173.35); past wage loss and future wage loss (undetermined at this time); past pain and suffering (undetermined at this time); any available claims for loss of consortium (undetermined at this time); and punitive damages (\$10,000,000.00). Plaintiffs agree to supplement this answer as discovery continues.

Signature of Attorney for Objection: \_\_\_\_\_

**INTERROGATORY NO. 24:** For each item of damages listed in response to the foregoing Interrogatories, state whether said item represents an actual "out-of-pocket" loss to

you or Decedent or whether said item was paid for you or Decedent, or reimbursed to you or Decedent by any insurance policy. If so, please identify the insurance company, the policy number and indicate whether said insurance company claims to be a real party in interest by way of subrogation or lien.

ANSWER: All funeral expenses were paid by Randi Kunnemann. There was no available life insurance or other proceeds to pay the funeral expenses.

Plaintiffs specifically reserve the right to amend this response and disclosure as additional information becomes available.

INTERROGATORY NO. 25: State whether you have received any letter of interest asserting subrogation or a lien from any state or federal entity or agency. If so, please describe the contents of said letter or produce a copy.

ANSWER: Plaintiff states that no lien has been asserted by a state or federal entity.

VERIFICATION

Randi L. Kunnemann  
RANDI L. KUNNEMANN, as Independent Administrator  
of the Estate of Karin K. Kunnemann

STATE OF KENTUCKY    )  
                                  )  
COUNTY OF FAYETTE    )

Subscribed and sworn to me, Randi L. Kunnemann, Plaintiff herein, on this the 7<sup>th</sup> day of Dec., 2005.

My Commission Expires:    June 18, 2008.

Sheila P. Hiestand  
NOTARY PUBLIC  
KENTUCKY - STATE AT LARGE

Respectfully submitted,

Sheila P. Hiestand  
SHEILA P. HIESTAND  
BUBALO & HIESTAND, PLC  
1344 South Broadway  
Lexington, KY 40504  
(859) 519-1750  
*Attorney for Plaintiff*



and negligent in that they failed to warn of dangerous leaking patches being sold by defendants. The warnings (i.e., package insert) at issue in the *Hendelson* case were the exact same warnings (i.e., package inserts) involved in this case, word for word.

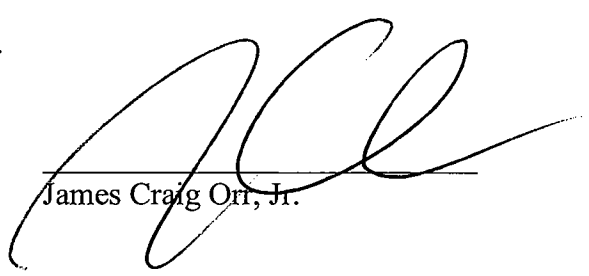
6. The jury in the *Hendelson* case was given a set of special interrogatories and made two findings:

(a) The jury answered “yes” to questions 1(c), “Did defendant Alza Corporation place the Duragesic patch on the market with a warning defect due to failure to warn about foreseeable dangerous patch leaks which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?”

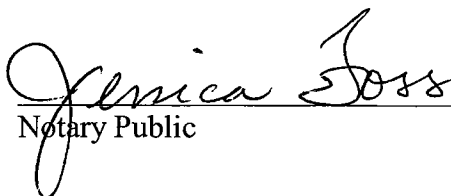
(b) The jury answered “yes” to question 2(c), “Was there negligence by way of failure to warn about foreseeable dangerous patch leaks on the part of defendant Alza Corporation which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?”

7. A true and correct copy of the jury’s verdict form is attached hereto as Exhibit A.

8. A true and correct copy of the final judgment is attached hereto as Exhibit B. The Final Judgment was never appealed, set aside or vacated.

  
James Craig Orr, Jr.

SUBSCRIBED and SWORN TO  
Before Me This 21 day of November, 2008

  
Notary Public





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-CV-81116-CIV-HURLEY

LEE HENDELSON, as Personal Representative of the  
Estate of ADAM HENDELSON, deceased,  
plaintiff,

vs.

ALZA CORPORATION and  
JANSSEN PHARMACEUTICA,  
defendants.

VERDICT

WE, THE JURY, return the following unanimous verdict:

I. Strict Liability Claims

1(a). Did defendant, Alza Corporation place the Duragesic Patch on the market with a manufacturing defect which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES

NO

1(b). Did defendant, Alza Corporation place the Duragesic Patch on the market with a design defect which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES

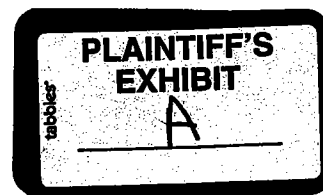
NO

1(c). Did defendant Alza Corporation place the Duragesic Patch on the market with a warning defect due to failure to warn about foreseeable dangerous patch leaks which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES

NO

1



1(d). Did defendant Alza Corporation place the Duragesic Patch on the market with a warning defect due to failure to warn about dangerous drug interactions which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES \_\_\_\_\_

NO  \_\_\_\_\_

2. Negligence Claims

2(a). Was there negligence in the manufacture of the Duragesic Patch on the part of defendant Alza Corporation which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES  \_\_\_\_\_

NO \_\_\_\_\_

2(b). Was there negligence in the design of the Duragesic Patch on the part of the defendant Alza Corporation which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES \_\_\_\_\_

NO  \_\_\_\_\_

2(c). Was there negligence by way of failure to warn about foreseeable dangerous patch leaks on the part of defendant Alza Corporation which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES  \_\_\_\_\_

NO \_\_\_\_\_

2(d). Was there negligence by way of failure to warn about dangerous drug interactions on the part of defendant Alza Corporation which was a legal cause of damage to the plaintiff, Lee Hendelson, as Personal Representative of the Estate of Adam Hendelson?

YES \_\_\_\_\_

NO  \_\_\_\_\_

*If your answer to all of the preceding questions (Nos. 1a - 1d and 2a - 2d) is NO, your verdict is for the defendant, and you should not proceed further except to date and sign this verdict form and return it to the courtroom.*

*If your answer to any one of the preceding questions (Nos. 1a - 1d and 2a - 2d) is YES, please answer question 3.*

3. By answering the following questions you will determine the damages if any that the Estate of Adam Hendelson, and Lee Hendelson sustained as a result of the incident in question.

**DAMAGES OF THE ESTATE**

a. What is the amount of any net accumulations lost by the Estate of Adam Hendelson?

\$ 500,000.00

**DAMAGES of LEE HENDELSON**

b. What is the amount of any damages sustained by Adam Hendelson's father, Lee Hendelson, in mental pain and suffering as a result of the death of Adam Hendelson?

\$ 5 million

*Please answer question No. 4.*

4. Under the circumstances of this case, state whether you find by clear and convincing evidence that punitive damages are warranted against the defendant Alza:

YES \_\_\_\_\_

NO  \_\_\_\_\_

If you answered "no" to question no. 4, skip the next questions, sign and date the verdict form and return it to the courtroom. If your answer to question no. 4 is "yes," please check the claim or claims on which you found, by clear and convincing evidence, sufficient evidence of gross negligence or intentional wrongdoing so as to justify an award of punitive damages:

- a. \_\_\_\_\_ Strict Liability Manufacturing Defect
- b. \_\_\_\_\_ Strict Liability Design Defect
- c. \_\_\_\_\_ Strict Liability Failure to Warn/Foreseeable Dangerous Leaky Patches

- d. \_\_\_\_\_ Strict Liability Failure to Warn/Dangerous Drug Interactions
- e. \_\_\_\_\_ Negligence in Manufacture
- f. \_\_\_\_\_ Negligence in Design
- g. \_\_\_\_\_ Negligent Failure to Warn/Foresceable Dangerous Leaky Patches
- h. \_\_\_\_\_ Negligent Failure to Warn/Dangerous Drug Interactions

SO SAY WE ALL this 19<sup>th</sup> day of June, 2007.

\_\_\_\_\_  
Foreperson (Printed Name)

\_\_\_\_\_  
Foreperson (Signature)

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 05-81116-CIV-HURLEY**

**LEE HENDELSON, as Personal Representative of the  
ESTATE OF ADAM HENDELSON, deceased,  
Plaintiff,**

**vs.**

**ALZA CORPORATION and  
JANSSEN PHARMACEUTICA,  
Defendants.**

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**FINAL JUDGMENT**

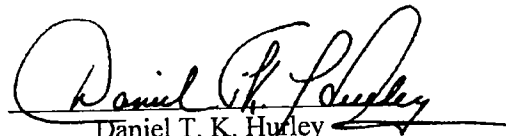
Based on the jury verdict entered in this cause on June 21, 2007 [DE# 219], final judgment for compensatory damages is entered in this action as follows:

It is **ORDERED** and **ADJUDGED**:

1. Plaintiff **LEE HENDELSON**, as **Personal Representative of the ESTATE OF ADAM HENDELSON**, shall take and recover judgment from defendants **ALZA CORPORATION** and **JANSSEN PHARMACEUTICA**, jointly and severally, in the amount of **Five Million Five Hundred Thousand Dollars and 00/100 (\$5,500,000.00)** for compensatory damages, which sum shall bear post judgment interest at the rate prescribed by 29 U.S.C. §1961 from this date, for which let execution issue.

2. The court reserves jurisdiction to award costs in favor of the plaintiff as prevailing party.

**DONE** and **SIGNED** in Chambers at West Palm Beach, Florida this 22 day of June, 2007.

  
Daniel T. K. Hurley  
United States District Judge

cc. All counsel



CASREF, CLOSED, JMH, REF\_DISCOV

**U.S. District Court**  
**Southern District of Florida (West Palm Beach)**  
**CIVIL DOCKET FOR CASE #: 9:05-cv-81116-DTKH**

Hendelson v. Johnson & Johnson, et al  
Assigned to: Judge Daniel T. K. Hurley  
Referred to: Magistrate Judge James M. Hopkins  
Demand: \$0  
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 12/15/2005  
Date Terminated: 10/16/2007  
Jury Demand: Both  
Nature of Suit: 365 Personal Inj. Prod.  
Liability  
Jurisdiction: Diversity

**Plaintiff**

**Lee Hendelson**  
*individually and as Personal*  
*Representative for the Estate of Adam*  
*Hendelson*

represented by **Bryan Frederick Aylstock**  
Aylstock Witkin Kreis & Overholtz  
PLLC  
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850-916-7450  
Fax: 916-7449  
Email: baylstock@awkolaw.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

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205-328-9576  
Fax: 328-9669  
Email: jwhatley@whatleydrake.com  
*TERMINATED: 05/30/2007*  
*LEAD ATTORNEY*



*ATTORNEY TO BE NOTICED***W. Todd Harvey**

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Birmingham , AL 35203  
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Fax: 328-9669  
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*LEAD ATTORNEY*

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**Charles W. Miller**

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**Edward E. Angwin**

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**James Craig Orr , Jr.**

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**Mitchell M. Breit**  
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Fax: 212-447-7077  
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V.

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**Defendant**

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**Defendant**

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**Defendant**

**All Parties**

| <b>Date Filed</b> | <b>#</b> | <b>Docket Text</b>  |
|-------------------|----------|---|
| 12/15/2005        | <u>1</u> | COMPLAINT filed; FILING FEE \$250.00 RECEIPT # 721000 ; Magistrate Judge LInnea R. JOhnson (rb, Deputy Clerk) (Entered: 12/15/2005)                                 |
| 12/15/2005        |          | Magistrate identification: (rb, Deputy Clerk) (Entered: 12/15/2005)   |
| 12/15/2005        | <u>2</u> | SUMMONS(ES) issued for Johnson & Johnson (rb, Deputy Clerk) (Entered: 12/15/2005)   |
| 12/15/2005        | <u>3</u> | SUMMONS(ES) issued for Janssen Pharmaceutic (rb, Deputy Clerk) (Entered: 12/15/2005)  |
| 12/15/2005        | <u>4</u> | SUMMONS(ES) issued for Alza Corporation (rb, Deputy Clerk) (Entered: 12/15/2005)  |
| 12/16/2005        | <u>5</u> | ORDER OF RECUSAL transferring case Judge Hurley ( Signed by Judge Donald M. Middlebrooks on 12/15/05) [EOD Date: 12/19/05] (cj, Deputy Clerk) (Entered: 12/19/2005) |
| 12/16/2005        |          | CASE reassigned to Judge Daniel T. K. Hurley (cj, Deputy Clerk) (Entered: 12/19/2005)   |
| 12/16/2005        |          | Magistrate identification: Magistrate Judge James M. Hopkins (cj, Deputy Clerk) (Entered: 12/19/2005)   |
| 01/24/2006        | <u>6</u> | RETURN OF SERVICE executed for Janssen Pharmaceutic on 1/5/06 Answer due on 1/25/06 for Janssen Pharmaceutic (cj, Deputy Clerk) (Entered: 01/24/2006)               |
|                   |          |   |