

SHOCKWAVES

The newsletter of the Committee for Truth in Psychiatry
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FIRST VICTORY IN ECT LAWSUIT! JURY AWARDS SURVIVOR \$635,177

Good news for a change! For the first time in history, a jury has ruled in favor of a survivor of ECT. Peggy Salters, 60, of Columbia, South Carolina, sued her hospital, her referring psychiatrist, and her treating psychiatrist for malpractice after losing half of her life—*thirty years*—to ECT amnesia. She was awarded the largest amount of money ever paid to a survivor, \$635,177.

Since the first lawsuit for ECT memory loss was brought in 1974, there are have many losses and some settlements, but no victories. The largest settlement to date was half a million dollars.

This case is significant not just for the money awarded, but because it marks the first time a jury has believed a survivor of ECT rather than her psychiatrists. Generally, lawyers successfully exploit the public's prejudice against persons with psychiatric labels—especially those who have had ECT—to convince juries that we are liars.

They tried to do so this time, but it didn't work. The jury found Ms. Salters' referring psychiatrist, Eric Lewkowiez, guilty. There was no verdict against the other two doctors involved in her care, Kenneth Huggins and Robert Schnackenberg, because of one holdout vote for acquittal. The hospital where Ms. Salters had a course of 13 outpatient shocks in 2000, Palmetto Baptist Medical Center in Columbia, South Carolina, paid her a cash settlement (of an undisclosed amount) prior to the beginning of trial.

Peggy Salters lost all memories of the man she'd been married to for thirty years, as well as the births of her children. Neuropsychological testing confirms that she suffered brain injury from the ECT; her intelligence has been permanently lowered and her cognitive abilities greatly compromised. Since ECT, she's been unable to resume her successful nursing career; in fact, like so many survivors of ECT, she now has difficulty

with tasks of daily living. She's been diagnosed with dementia and is now taking medication commonly prescribed for Alzheimer's patients.

Psychiatrist Peter Breggin, a critic of ECT, served as one of Ms. Salters' expert witnesses. Breggin has been hired as an expert in ECT cases dozens of times and in fact was the expert witness in the very first ECT amnesia case ever three decades ago. But he has never before won a shock case, so it seems unlikely that it was his testimony (which cost the plaintiff over \$30,000) that made the difference in this case. More likely, it was the compelling testimony of the psychologist who tested Ms. Salters and had treated her for three years. Over and over, the defense tried to paint the victim as mentally ill; over and over, the psychologist, Mary Beth Shea, described Ms. Salters' alleged symptoms as a normal reaction to her enormous losses. Dr. Shea was also able to use a standardized test of remote memory to prove to the jury's satisfaction that her client could not remember the last thirty years.

Drs. Max Fink and Charles Kellner served as the expert witnesses for the defense. Both have longstanding financial ties to the companies that manufacture ECT devices. Kellner, a former editor of the *Journal of ECT*, testified that giving shock every day instead of three times a week as usual was not a violation of the American Psychiatric Association's guidelines. However, his assertions that the daily treatment was justified because of Ms. Salters' severe suicidality could not be substantiated by the medical records.

Fink, the 84-year-old often called the "grandfather of shock", ended up not testifying at trial due to incriminating statements he made under oath at deposition.

Peggy Salters thinks that the jury came up with the figure of \$635,177 by calculating what she would have made had she continued to work to

retirement age. She also said she sees her historic win as a victory for all survivors of ECT. In particular, she hopes that the fact that the referring doctor (who did not perform the shocks himself) was found liable for damage caused by the treatment will give pause to other doctors who refer patients for shock thinking it's harmless to both patients and themselves.

So far, there has been only one media account of this lawsuit. That was a notice by Alexander Cockburn in the alternative journal *Counterpunch* (www.counterpunch.org) in July. The headline said it all: "At last! Shock treatment gets whipped in court." Quoting from Fink's deposition testimony, Cockburn noted, "defiant ghoulishness seems to be a stock in trade of the ECT lobby."

If you would like to know more about this case, or spread the hopeful word to other people who would like to sue, the information is as follows:

The number of the case is 03CP4004797. It was filed in Richland County, South Carolina on October 3, 2003 and decided June 17, 2005. The title of the case is Peggy S. Salters v. Palmetto Health Alliance Inc., d/b/a Palmetto Baptist Medical Center; Robert Schnackenberg M.D., individually; Eric Lewkowiez M.D., individually; Columbia Psychiatric Associates, P.A.; and Kenneth Huggins, M.D., individually. The attorney for Ms. Salters was Mark W. Hardee of Columbia, S.C. He can be reached at (803) 799-0905 or mwhardee@bellsouth.net. Peggy Salters can be reached at (803) 736-4444 or pegsalt977@aol.com.

Excerpts from the deposition of Max Fink, M.D.

Max Fink, who's defended many shock doctors over the years, embarrassed even himself during his deposition in the Salters case.

His entire deposition is available from CTIP, electronically or by mail. If he ever works on an ECT case again, his words will surely come back to haunt him. Besides, they provide a revealing look at the thinking of this most influential industry leader. Here are some of the highlights from his May 24, 2005 testimony.

On number of treatments:

Max Fink: There are no absolute limits on the low side or the high side if you're going to give patients a treatment...I have personally treated patients twice a day. And there was a time when I gave patients eight treatments in one sitting, you know, on an experiment that we did many years ago. So yes, I have treated patients with eight seizures in a morning...It was called multiple-monitored ECT. It was a government-sponsored project in an effort to find out if we can speed up the process.

On informed consent:

Max Fink: Informed consent is a process. At the time you begin the process, you don't know exactly what you're going to be doing for the number of treatments, frequency--inpatient, outpatient. I don't know anybody who's discussed in detail the number and frequency of treatments.

Marc Hardee, attorney for Ms. Salters: Do you have an opinion as to whether or not there was a proper informed consent within the standard of care in this particular case?

Dr. Fink: Yes...the physician saw the patient--The patient was referred to the physician with a recommended diagnosis that ECT be considered...

Mr. Hardee: Who had these discussions with Ms. Salters regarding the risks and benefits of ECT, which of the doctors?

Dr. Fink: Well, the physician who signed the consent. I'd have to check. I'm not sure...Nurses met with the patient and discussed the consent issue.

Mr. Hardee: So it would be the nurses who discussed the risk and benefit of ECT?

Dr. Fink: Almost every physician that I know who gives ECT has a trained person who deals with the patients on his behalf.

Mr. Hardee: Is there any record, did you know, or have you talked to anybody so that you would know for a fact, not assuming, they talked to her about the risks and benefits of ECT?

Dr. Fink: Well, they wouldn't have had an opportunity to sign a consent form without a discussion. You don't give somebody a blank form and say sign here without telling them what it is for.