

He is a citizen of Montana. On or about May 29, 1998, he was appointed by the Thirteenth Judicial District Court of Montana, (Yellowstone County) as the personal representative of the estates of his wife and daughter. Docket Nos. 98-130 and 131.

3. Plaintiff Neva Hardy is a citizen of Wyoming and is the sister of the decedent Rita Schell who was married to the decedent Donald Jack Schell. On or about March 25, 1998, she was appointed by the District Court of the Sixth Judicial District in Campbell County, Wyoming as successor personal representative of the estates of her sister and brother in law. Probate Nos. 5617 and 5618.

4. As personal representatives, both plaintiffs are proper wrongful death plaintiffs under the Wyoming Wrongful Death Act, Wyo.St. §1-38-102. Plaintiffs bring this suit for the benefit of all persons entitled to recover under that Act, including, but not necessarily limited to Tim Tobin, the widower of Deborah Tobin and father of Alyssa Tobin; Mike Schell, the surviving son of Don and Rita Schell; and Floy W. Reavis, the surviving mother of Rita Schell; and all others who may be compensated under the law of Wyoming.

5. Defendant SmithKline Beecham Pharmaceuticals is an unincorporated operating division of SmithKline Beecham Corporation. SmithKline Beecham is a foreign corporation with US headquarters at One Franklin Plaza, P.O. Box 7929, Philadelphia, Pennsylvania 19101. It developed, designed, manufactured and marketed the chemical compound paroxetine under the trademarked brand names Paxil (US) and Seroxat (European).

Jurisdiction and Venue

6. Jurisdiction is based on diversity of citizenship. 28 U.S.C. §1332. The amount in controversy is substantially in excess of Seventy Five Thousand Dollars (\$75,000), exclusive of interest and costs.

7. The actions giving rise to this cause of action happened in this District, and

SmithKline Beecham transacts business and is "found" throughout the State of Wyoming. Accordingly, venue is permissible in this district and division pursuant to 28 U.S.C. §1391.

Facts

This suit has been necessitated by virtue of the following facts which are pled concisely in accordance with Rule 8, Fed.R.Civ.P.

8. Tim Tobin and Deborah Schell (Tobin) were college sweethearts. They married on July 25, 1992 in Gillette, Wyoming. On May 19, 1997, their daughter Alyssa was born. The Tobins were close to Deborah's parents and visited with them frequently. In February 1998 the Tobins went to visit Mrs. Tobin's parents in Gillette. Deborah and Alyssa stayed with the Schells for about a week and a half.

9. On several occasions through the years Don Schell suffered from situational depression. He was seen by his family physician. On or about February 11, 1998, Donald Schell went to see his family physician complaining about anxiety, stress and possible depression. He was given promotional samples of Paxil.

10. Two days later, on or about February 12th or 13th, 1998, while under the influence of Paxil, he shot and killed his wife, his daughter, and his grand-daughter, and then himself. The Gillette Police Department thoroughly investigated the incident and concluded that it was, indeed, a multiple homicide followed by suicide. They made note of the prescription for Paxil, and, indeed, interviewed his physician and obtained his medical records.

11. Paxil is a mind-altering chemical compound, synthetically designed and manufactured by SmithKline Beecham. Paxil is one of a class of drugs commonly known as "selective serotonin reuptake inhibitors" or SSRI's. Beginning at least by February 1990, if not before, the pharmaceutical industry was aware of public reports of a potential causal relationship between the ingestion of an SSRI and violence or suicide. The first reports, and most of the

literature, focused on Prozac, because it was the first SSRI approved by the FDA for sale in this country. However, many of the biological and behavioral effects of the SSRI drugs, including those that sometimes lead to violence and suicide, are common to the class of drugs.

12. SmithKline never fully researched or properly tested the propensity of Paxil to cause suicide or violence in some people.

13. SmithKline also never warned the public or the medical profession or the patients who would be given Paxil about the adverse effects which sometimes result in violence and suicide. Indeed, to the contrary, it is alleged that it took affirmative steps to mislead the public, the medical profession, and the consuming public, about the safety of Paxil.

14. Moreover, SmithKline and the other SSRI manufacturers have actively and aggressively marketed this drug to primary health care providers, like the physician who prescribed Paxil to Don Schell. The importance of appropriate warnings and instructions is intensified with respect to prescriptions by people who have no specialized training in brain chemistry or human behavior.

15. SmithKline has utilized both public relations and advertizing to defuse adverse publicity, reassure both physician and patient, and stimulate demand at the patient/consumer level so that ordinary lay people like Don Schell will ask their doctors to prescribe Paxil, or, at least, accept the physician's recommendation and take the drug without objection. In recent years it has used direct-to-consumer advertizing. This advertizing is obviously designed to promote Paxil to the public.

Legal Theories and Causes of Action

All of these facts are cognizable under recognized theories of law in Wyoming which support the following two causes of action.

16. FIRST: Defendant is strictly liable under the principles of Restatement (Second) of

Torts, §§402A and 402B, for design defects, marketing defects, and misrepresentations which were proximate causes of the decedents' deaths; and under the principles of the new Restatement (Third) of Torts, which will likely be adopted by the Wyoming Supreme Court.

17. SECOND: Defendant's conduct is unreasonable, or negligent, and was a proximate cause of the decedents' deaths. Specifically, Plaintiffs would show that, in addition to its negligent failure to warn and negligent misrepresentations, SmithKline has been negligent in failing to investigate or test Paxil to determine the nature and extent of its potential to cause violence or suicidal behavior in some people.

18. Defendant's conduct was intentional, in reckless disregard of the consequences. To a high degree of probability, this conduct was likely to, and did, result in harm to persons, such that it amounts to willful and wanton misconduct, for which an award of exemplary damages should be made.

Damages and Remedies

19. Plaintiffs bring this suit pursuant to the Wyoming Wrongful Death Act §1-38-101, *et seq.* Under that statute, Plaintiffs are entitled to such damages that the Court and/or jury deems "fair and just", including both "pecuniary and exemplary" damages. §1-38-102. Plaintiffs and/or those for whom they bring this action, have in the past suffered and will in the future suffer, *inter alia*, loss of services; loss of income; loss of probable future companionship, society and comfort; funeral bills; and other damages.

20. Plaintiff Tim Tobin, and perhaps others similarly situated, have an additional cause of action and remedy under the Montana Wrongful Death Act, §27-1-513. The measure of damages under this Act includes sorrow, grief, and mental anguish or distress over the loss of his wife and only child.

Jury Demand

21. Pursuant to Rule 38(c), Fed.R.Civ.P., Plaintiffs demand their right to trial by jury of the liability and actual damages issues in this case. The question of whether to award exemplary damages and the amount of such damages shall be tried to the Court.

WHEREFORE, Plaintiffs seek compensatory and exemplary damages against the Defendant SmithKline in an amount to be determined by the trier of fact, and all other and further relief, including costs of court and prejudgment interest, to which they may show themselves to be entitled under the law and on the facts.

Respectfully submitted,

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[APPLICATION FOR ADMISSION PRO HAEC VICE TO BE SUBMITTED]