

Paxil Maker Held Liable in Murder/Suicide

Will \$6.4 Million Verdict Open a New Mass Tort?

By Anne Thompson

Plaintiffs' lawyers have argued for years that the so-called miracle antidepressants – Prozac, Paxil and Zoloft – have a darker side that pharmaceutical makers have hidden from the general public, occasionally with lethal consequences.

But faced with the millions of lives those same medications have transformed for the better, plaintiffs' lawyers had been unable to hold the drug makers responsible in court for their alleged deception.

Until now, that is.

For the first time, a jury found a pharmaceutical firm liable for deaths caused by a patient taking an antidepressant. A federal jury in Cheyenne, Wyo., ordered SmithKline Beecham (now GlaxoSmithKline) to pay \$6.4 million to relatives of Donald Schell.

Schell, 60, had been taking Paxil for just 48 hours when he shot and killed his wife, his daughter, his granddaughter and himself.

The June 7 verdict may alter the landscape in a mass tort that had struggled to gain traction.

Although plaintiffs' lawyers had filed hundreds of cases against the manufacturers of the three leading antidepressants, all but three of those suits were dismissed or settled. The first two cases to reach trial – both against the makers of Prozac – ended in defense verdicts.

But now, with the dramatic victory in the Paxil case, plaintiffs' lawyers say the drug companies will be more willing to settle and will face a tougher road when they take cases to court.

According to Andy Vickery, who tried the case for the plaintiffs, the verdict lays firm groundwork for future cases involving Paxil because the Wyoming jury found the medication could cause someone to commit suicide or homicide. He also believes the verdict is bad news for makers of the other two antidepressants which will be implicated by association.

"On a fundamental gut level, this is going to make all these people very nervous," says Vickery, partner in a four-lawyer Houston firm.

All three drugs are SSRIs (selective serotonin reuptake inhibitors) which control depression by preventing the brain from reabsorbing serotonin, a chemical which is produced naturally to control mood, sleep and appetite.

Lawyers for GlaxoSmithKline did not return phone calls. A spokeswoman said the company has filed a request for a new trial and cannot discuss the case while it is under appeal.

Central to Vickery's case were SmithK-



Andy Vickery (left) and co-counsel James Fitzgerald (right) look on as their client, Timothy Tobin (center), discusses his victory against the makers of Paxil. Tobin's wife and daughter were murdered by his brother-in-law, Donald Schell, after he started taking Paxil to treat his depression.

line internal documents showing the company was aware that a small number of people could become agitated or violent from Paxil. Despite this knowledge, Paxil packaging does not include a warning about suicide, violence or aggression, which makes the company liable, according to the verdict. Neither Zoloft or Prozac comes with such a warning and plaintiffs' lawyers have obtained internal documents from both companies showing their knowledge of the potential problems, according to Los Angeles attorney Skip Murgatroyd.

Although Murgatroyd and Vickery are currently handling virtually all of these cases, they say the recent verdict could make it easier for other lawyers to take up the cause.

With the internal documents now a matter of public record, Murgatroyd believes the Paxil verdict could be the beginning of mass tort litigation similar to that against the makers of cigarettes, asbestos and lead paint.

"It's very much like what happened with Big Tobacco," Murgatroyd says. "The key element is obtaining the internal causation documents. As soon as the internal documents come out, things start being looked at in a very different light."

A 'Three-Legged Stool'

There was no question that Donald Schell was depressed. Before taking Paxil, he had been on other antidepressants including Prozac.

Furthermore, there seemed to be no other motivation for the murder-suicide. He had no obvious marital problems and clearly adored his daughter and granddaughter. So the pivotal question of the trial was: Did taking Paxil for two days – one pill each day – cause Schell to go berserk? Or did he become violent because he was already depressed?

This chicken-and-egg-type question had been at the heart of other the other antide-

pressant trials, as Vickery knew well. He had tried and lost a similar case – *Forsyth v. Eli Lilly & Co.* – in Hawaii in 1999.

"In Hawaii, I stupidly [bought into their] either/or argument: Was it the drug or the depression? Here I just focused on the drug." By doing so, he reframed the debate for the jury from, "Was it the depression or the drug?" to "Is it possible for the drug to produce a violent reaction in some people?"

He learned another lesson from that case: How to more effectively challenge the company's interpretation of the science.

"Exhorting science" is one part of the standard, three-part defense strategy that pharmaceuticals "always, always, always" use in antidepressant cases, says Vickery. "It's like a three-legged stool." Using doctors as expert witnesses and years of experience in medical research, the drug companies state that the bulk of scientific evidence shows that SSRIs help millions of

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people.

The second "leg" of the defense strategy is emphasizing that depression is a dangerous mental disease that can cause people to behave abnormally. And the third, says Vickery, is to dig up as much background as possible about the decedent that would show violent tendencies prior to taking medication.

But throughout the 27-week trial, Vickery says he focused on attacking the science "leg." Over and over, he tried to prove that scientific evidence also shows that some people who take SSRIs, specifically Paxil, become aggressive and suicidal.

Internal Documents

Vickery won a critical pre-trial battle over SmithKline's motion to exclude or limit testimony from Vickery's two expert witnesses, British psychiatrist Dr. David Healy and Dr. John T. Maltzburger, an associate clinical professor of psychiatry at Harvard Medical School.

Healy has written and lectured widely on his view that all SSRIs - Prozac, Paxil and Zoloft - should carry warning labels. He says the drugs, viewed as relatively harmless when they came on the market in the 1980s, could trigger suicidal and violent behavior in some patients. On the stand in Wyoming, Healy testified that his own studies show that SSRIs could cause one in four healthy volunteers to become agitated, in some cases suicidal. And he said internal SmithKline documents from studies conducted at the company's request by Beecham labs supported his findings.

The internal documents, stamped "confidential," list the results of a Paxil test involving more than 2,000 healthy volunteers taking either the drug or a placebo. Vickery's team boiled the results down to a summary of the hundreds of volunteers who had adverse reactions - ranging from insomnia or anxiety to attempted suicide - that Beecham doctors said were either "possibly," "probably" or "definitely" caused by Paxil.

The fact that Donald Schell had taken only two doses of Paxil before his rampage was a major defense argument.

"Paxil is a very effective medication in helping depression," attorney Charles Preuss said after the trial. "Our only regret is that Mr. Schell did not have Paxil for a longer period of time."

To counter this, Vickery pointed out that volunteers in the Paxil test experienced anxiety, nightmares, hallucinations and other side

effects - definitely caused by the drug - within two days of taking it. As early as four days, one volunteer experienced akathisia, a form of agitation that increases the risk of violence and suicide. Two volunteers attempted sui-

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were a host of incidents from their own internal documents, all occurring within a day or two or three, all of them related to the drug.

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The defense largely ignored the internal documents during the trial, Vickery says, except to identify an error in them: One volunteer who had an extreme adverse reaction in the test was taking the placebo, not Paxil.

To stress the bulk of scientific evidence in favor of Paxil, the defense called Dr. J. John Mann, a leading suicidologist and professor of psychiatry at Columbia University. But Vickery says Mann also admitted during cross-examination that he had written in three articles that there was possibly a small, subpopulation of patients vulnerable to suicide or violence under the drug.

Vickery had asked for \$25 million in damages. The jury of five women and three men deliberated 57 hours before reaching a verdict and awarding \$8 million. SmithKline was found 80 percent liable, Donald Schell 20 percent. The result was \$6.4 million divided among Schell's son, his son-in-law and his wife's two sisters.

Tip of the Iceberg

So far, only a few lawyers have taken on antidepressant cases, which can be time-consuming and expensive. One of those lawyers died, another retired and a third cut back her cases. That leaves Vickery and Murgatroyd, who devote much of their time to SSRIs. In terms of expense, the Paxil trial cost Vickery's firm more than \$50,000.

Both lawyers have cases in the works involving all three of the antidepressants. Vickery has two Paxil cases, one a suicide the oth-

er a murder/suicide, and two Zoloft cases, a suicide and an attempted homicide. He also has one case involving a woman who attempted suicide while on Prozac. And this fall, he expects to begin an oft-postponed trial involving a teenage boy who hanged himself one week after taking Zoloft. The boy's parents have sued Pfizer for failure to warn and wrongful death.

In addition to cases involving death from antidepressants, Murgatroyd is preparing to file a class-action suit in Los Angeles involving 25 people who claim extreme agitation from trying to go off Paxil.

And apparently, more cases are out there. Vickery and Murgatroyd both say they get numerous calls from potential clients and from other lawyers seeking help with SSRI cases. Vickery's website, www.justiceseekers.com, usually gets about 30 hits a day; the day after he appeared on a TV morning show about the Paxil verdict, he says, the site got more than 900 hits.

"This is just the tip of the iceberg," Vickery says.

With the recent verdict, Murgatroyd says other plaintiffs' lawyers should consider antidepressant cases, despite a lot of legwork when getting started. There's a formula to these cases, for the plaintiffs' side and the defense, which makes them easier to handle over time, he says.

"What lawyers need to understand is once they do one case, they have all the information they need for future cases," Murgatroyd says. "You only have to do one. The information doesn't change." **LWUSA**

Questions or comments can be directed to the editor at: bibelle@lawyersweekly.com

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----- Body System-Nervous System -----											
Patient Identifier	Age	Sex	Investigator Term	Onset (St. Day)	Dose	Stop (St. Day)	Drug Relat.	Seve- rity	Action	Out- come	
			EM		4	11	5	3	1	2	
			IRRITABILITY	4	40	11	5	3	1	2	
6162 005	31	F	AKATHISIA	4	40	11	5	2	1	2	
6162 006	56	F	IRRITABILITY	4	10	11	3	2	4	2	
			AKATHISIA	5	20	12	5	3	4	2	

The "smoking gun" document in the case was an internal report showing that some participants in company-sponsored Paxil trials became highly agitated. A score of 5 in "drug relationship" means the symptoms were "definitely" caused by the medication and a score of 2 in "Outcome" means the person is still suffering from the problem.