

CIV - HUCK

MAGISTRATE
TURNOFF

KILEY BECHLER, as personal representative of
and Executrix of the Estate of STEVEN SCOTT
BECHLER,

CASE NO.:

JURY TRIAL
DEMANDED

Plaintiff,

vs.

CYTODYNE TECHNOLOGIES, INC., ROBERT
CHINERY, PHOENIX LABORATORIES, INC. and
XYZ CORPORATION,

Defendants.

FILED BY _____ NC
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CLARA M. HARRISON
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COMPLAINT

Plaintiff Kiley Bechler, as personal representative of and Executrix of the Estate of Steven Scott Bechler, by her attorneys, Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A. and Meiselman, Denlea, Packman & Eberz P.C., as and for her complaint, brings this action for wrongful death pursuant to the Florida Wrongful Death Act and alleges, with personal knowledge as to her own actions, and upon information and belief as to those of others, as follows:

Nature of the Case

1. Steve Bechler is dead. Ephedra killed him. Despite overwhelming evidence that the lethal combination of caffeine and ephedrine alkaloids peddled by defendants as a miracle "fat loss catalyst" has fatally and irreparably harmed hundreds, if not thousands, of individuals, defendants have placed corporate and personal profits firmly ahead of consumer safety and recklessly endangered the welfare and well-being of a misled public. Unfortunately for the widow, Kiley, and

newborn daughter, Haile, of Steve Bechler, defendants' callous avarice prematurely cut short the life of a Major League Baseball player and forever stripped from the Bechler family a loving husband and expectant father.

2. The evidence concerning the dangers associated with ephedra is undeniable. Banned by the National Football League, the NCAA, the International Olympic Committee, the United States Armed Forces, and numerous other professional organizations, it was only a matter of time before a tragedy of Steve Bechler's magnitude focused the nation's glare on the poisonous cocktail known as "Xenadrine-RFA-1." Indeed, in the wake of Steve Bechler's death, numerous retailers such as GNC and Wal-Mart have ended their sale of "dietary supplements" containing ephedra; state and local municipalities, including the states of New York and Illinois, have banned outright the sale of ephedra-based products; and state and federal lawmakers have focused their scrutiny on outlawing a product which is demonstrably unsafe. Similarly, the American press has published scores of newspaper articles educating the public about the dangers of ephedra. Tragically, however, it took the death of a professional athlete to serve as the lightning rod for these dramatic actions. By this lawsuit for wrongful death, Kiley Bechler seeks (i) to lend her voice to the growing chorus of those who seek to eliminate this dangerous product forever and (ii) to redress the significant financial loss sustained as a result of defendants' wrongdoing.

Jurisdiction and Venue

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that plaintiff and defendants are citizens of different states and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. Defendant Chinery's intentional tortious acts which caused Steve Bechler's death within this state deprive him of any protection he might otherwise have for his personal liability under the corporate shield doctrine.

11. Defendant Chinery has purposefully misused the corporate form of defendant Cytodyne to commit an intentional fraud upon the public.

12. Defendant Chinery is the individual responsible for formulating the combination of ingredients (and their respective concentrations) contained in Xenadrine RFA-1.

13. Defendant Chinery did not subject Xenadrine RFA-1 to sufficient product-specific scientific or medical testing prior to its initial sale to the public.

14. Defendant Chinery was aware of consumer health-related complaints and injuries occasioned by the use of Xenadrine RFA-1 prior to Steve Bechler's demise, yet took no action to prevent against such injuries.

15. Defendant Chinery manipulated the "scientific" data and research that was conducted in an effort to cast a false and misleading light on the efficacy of Xenadrine RFA-1.

16. Defendant Chinery tried to influence the researchers, including Jeffrey Armstrong of Eastern Michigan University, who were engaged to test the safety of Xendrine RFA -1, to rewrite the results of their investigative studies in a misleading and deceptive manner so as falsely to portray Xenadrine RFA-1 as a safe and effective product.

17. Indeed, in a recent bench trial tried to completion in the Superior Court of the State of California, County of San Diego, Judge Ronald L. Styn concluded:

The Court does not find Mr. Chinery to be credible. . . The Court finds [Cytodyne] was well aware that the claims made in the early ads [concerning the efficacy of the product] were not accurate, as Mr. Chinery knew Xenadrine RFA-1 had not been the subject of the studies, knew only portions of the ingredients had been studied, and knew of the different dosages. Since Mr. Chinery was drafting the advertisements, it was his language that was designed to mislead consumers reading the advertisements by making a reader think that Xenadrine RFA-1 had been tested.

Defendant Chinery's personal involvement and knowledge of the fraud being perpetrated by defendant Cytodyne subjects him to individual liability for both his and Cytodyne's wrongdoing.

18. Defendant Phoenix Laboratories, Inc. ("Phoenix") is incorporated under the laws of the State of New York with its principal place of business located in Hicksville, New York. Defendant Phoenix is a wholly owned subsidiary of Evergood Products Corporation. Plaintiff reserves her right to amend the Complaint to name Evergood as a defendant to this action after she has had an opportunity to discover Evergood's complicity, if any, in defendants' wrongdoing.

19. Defendant XYZ Corporation ("XYZ") is the company from which Steve Bechler bought the bottle of Xenadrine RFA-1 that killed him. The identity of XYZ Corporation will be known once defendants Cytodyne and Phoenix identify the retailer from whom Steve Bechler purchased the bottle of Xenadrine RFA-1 that he was using shortly before his death.

Operative Facts

20. Steve Bechler's life was the metaphorical canvas of Norman Rockwell paintings and the subject of little boy's dreams; a small town hero who married his high-school sweetheart and had an opportunity to play professional baseball at the Major League level.

21. Born in the small town of Medford, Oregon, Steve attended South Medford High School from which he graduated in June, 1998. During the summer of 1997, prior to his senior year

of high school, Steve led his American Legion baseball team to the World Series where he pitched consecutive back-to-back games on the very same day. That same summer he met Kiley, a successful softball player from his rival high school, Crater High School, with whom he shared the same uniform number, #22.

22. Steve was actively courted during his senior year by professional baseball clubs who saw his promise as a major league baseball player. Indeed, the Baltimore Orioles' scouts (the organization by whom he was subsequently drafted) declared that Steve's curveball was "shockingly good" and "is the best I've seen at his level. Don't see many this good at pro level." One scout continued, "[Steve] simply has major league stuff and a feel for what to do with it." Another scout concurred, seeing Steve as a key starter on a "championship staff," with a curveball that was "the best I have seen in person." As Steve's talent began to blossom, so too did his romance with Kiley, whom he escorted to his senior homecoming dance in the fall of 1997.

23. Not only did the major league scouts laud his physical talent, but they also praised his competitive fire, dedication and will to exceed. One scout declared that Steve was a "very competitive young man" and enthusiastically proclaimed "above all else this kid is a winner who truly enjoys beating people. [He] plays with a fire in his belly that is rare to see almost as if he has something to prove."

24. The Orioles thought so highly of Steve's skills and his future contribution to their organization that, in 1998, following his graduation, they drafted him straight out of high school, as the team's third-round pick, and paid him a signing bonus of \$225,000. Naturally, the Town of Medford basked in the accomplishments of its home-grown son.

25. Following the draft, Steve rose steadily and rapidly through the Orioles organization. In September, 2002, at the age of only 22, he was "called up" to the major leagues, where he joined the Orioles' 40-man roster, made his major league debut and remained with the club through the end of the season. In fact, the Major League Contract executed by both Steve and the Baltimore Orioles memorialized that Steve "has exceptional and unique skill and ability as a baseball player" and that his pitching services "are of a special, unusual and extraordinary character." The following month, on October 22, 2002, Steve and Kiley were wed.

26. The 2003 baseball season offered even greater opportunities, both on the field and off, which Steve was determined to seize. With major league experience, a newly-wed wife and the expectation of their first child in April, 2003, Steve's life held all the promise and joy that he could possibly have hoped for. Indeed, Steve was told that he had an excellent probability of spending most, if not all, of the 2003 season in the big leagues and Steve was unbridled in his enthusiasm for the family that he and Kiley were preparing to enjoy.

27. Excited and optimistic, and doggedly focused on his goals, Steve reported to the Orioles' spring training camp in Fort Lauderdale, Florida on February 14, 2003. Unfortunately, the season that began with such promise for Steve and Kiley quickly turned tragic when Steve became ensnared in the web of deceit spun by defendants. He purchased over-the-counter and without the necessity of a prescription, a bottle of the dietary supplement Xenadrine RFA-1 -- manufactured by Phoenix and marketed and distributed by Cytodyne -- at a store owned by XYZ Corporation.

28. Unaware of the devastating physiological impact that Xenadrine RFA-1 can have on the human body, Steve used the product based on its promises, which included, among others, "Lose Weight Fast" and "Rapid Fat Loss Catalyst™," and its proclamation of having been "Clinically

Proven.” Unbeknownst to Steve, however, ephedra is a substance that has profound sympathomimetic effects on the cardiovascular and central nervous systems.

29. On the morning of February 16, 2003 while at practice, Steve suddenly collapsed during his workout. He could not stand up. He lay on his back, breathing extremely rapidly. Steve’s condition soon worsened drastically. His body temperature, heart rate, blood pressure, and respiratory rate all began to soar.

30. A rescue team was summoned, and transported Steve to the hospital. While en route, Steve vomited large amounts and was suctioned. His body temperature continued to rise, reaching over 108°. He began, among other things, to experience apparent seizures, gastro-intestinal bleeding, respiratory insufficiency, renal failure, abnormal liver function, and shock. Despite the intervention of numerous specialists, little could be done to reverse the irreparable damage that Steve had sustained.

31. The next morning, February 17, Steve went into cardiac arrest. He was initially resuscitated, but went back into cardiac arrest, which this time proved irreversible. Steve was dead, at age 23. The dream had become a nightmare.

32. It is indisputable that Xenadrine RFA-1 killed Steve. The Broward County Medical Examiner conducted a comprehensive investigation into Steve’s death, including detailed analysis of Steve’s clinical history, the circumstances preceding his death, autopsy findings, toxicology findings, final anatomic-pathological diagnoses, and made a conclusive determination of the cause and manner of Steve’s death.

33. The Medical Examiner’s report excoriates ephedra as “a significant factor” in Steve’s death. For instance, the Report states in its toxicology findings:

Both blood and plasm samples taken during the hospitalization, and the post-mortem blood, eye fluid, bile and liver samples, were found to contain significant amount of ephedrine and caffeine, drugs present in the Ephedra and Guarana herbal extracts which are components of Xenadrine RFA 1, an over the counter herbal food supplement which is advertised as a thermogenic weight reducing medication and energy booster.

34. The Medical Examiner's Report further states:

Xenadrine [is] a thermogenic herbal preparation that contains herbal extracts of ephedrine (from Ephedra or Ma Huang), caffeine (from Guarana) and synephrine (from Citrus Aurantium). Ephedra's ephedrine pharmacological action is potentiated by caffeine and synephrine.

As a thermogenic compound, Ephedra, primarily through its ephedrine component, increase[s] the body's metabolism and raises the body's temperature, decrease[s] the body['s] capability to dissipate heat by constricting the small blood vessels of the skin, increases the blood pressure and accelerates the pulse. Its effects are particularly potent in individuals with other significant risk factors.

35. The Medical Examiner's Report concludes that:

[T]he intake of Ephedra containing ephedrine was a significant factor in the genesis of the exertional heat stroke, based on its known pharmacological effects and on the significant levels of ephedrine present in Mr. Bechler's blood during his hospitalization after his heat stroke related collapse.

36. The Medical Examiner determined the cause and manner of Steve's death to be directly linked to the Xenadrine RFA-1:

In conclusion, based on the circumstances of the collapse, and the clinical, pathological and toxicological findings, it is my determination within a reasonable degree of medical certainty that the cause(s) of death of Mr. Steve Bechler were:

1. Multi-organ Failure
Due to
2. Exertional heat stroke (EHS)

Due to
3. Multiple risk factors, including Ephedra toxicity.

(emphasis supplied)

37. Steve's needless death, standing alone, is an almost unspeakable tragedy. Fortunately, however, it has also served as a lightning rod by which to marshal the overwhelming evidence that ephedra is a dangerous substance which should be banned. Ephedra has been linked to over 100 deaths and countless serious adverse health consequences in the last few years alone. It has been specifically tied to heatstroke, hypertension, heart palpitations, heart attacks, strokes, seizures, psychiatric problems, gastrointestinal effects, and permanent impairments. The ephedra-caffeine-aspirin-related (willow bark) "stack," together with other ingredients, created, marketed and sold by defendants is especially lethal in its combination and concentration of substances. Defendants concocted a combination of substances that raise the heart rate, elevate blood pressure and body temperature, and when combined with exercise (as recommended by defendants on their label), often results in stroke and heart attack.

38. No less than the federal Department of Health and Human Services has issued a warning about the "serious risks" that ephedra poses. The Food and Drug Administration ("FDA") is now taking steps further to regulate and restrict its sale -- including requiring specific "black box" warnings on labels -- and a number of states and local governments have banned ephedra entirely. The State of California has filed suit against manufacturers and sellers of ephedra products. The American Medical Association and the American Heart Association have both asked the federal government to ban the sale of ephedra and Congress has demanded defendant Cytodyne's research

records. And, in the wake of Steve's death, Minor League Baseball has banned the use of the substance altogether.

39. In a startling concession as to the dangers inherent in Xenadrine RFA-1, none other than defendants Cytodyne and Phoenix themselves have stopped selling ephedra based products and have sought instead to sell a nearly identically packaged product, known as "Xenadrine EFX," that highlights in capital letters that it is "EPHEDRINE FREE."

40. Because defendants' belated concession is utterly incapable of resuscitating Steve Bechler, defendants must now be held accountable for the devastating financial loss that their actions have caused.

41. Through their conduct as described herein defendants wrongfully caused the death of Steve Bechler.

42. Beneficiaries, identified herein pursuant to F.S.A. § 768.21, include plaintiff Kiley Bechler, Steve Bechler's spouse and the parent and natural guardian of the Bechlers' posthumously born daughter, Hailie Bechler and Haile Bechler. Other potential beneficiaries are Steve Bechler's parents, Ernest and Patricia Bechler.

Count I

(Wrongful Death- Strict Liability in Tort – Inherent, Unreasonable Dangerousness)

43. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 42 above as if fully set forth herein.

44. Xenadrine RFA-1 -- which Phoenix is in the business of manufacturing; Cytodyne and Chinery are in the business of distributing, marketing, and selling; and XYZ Corporation is in the business of marketing and selling -- is an inherently, unreasonably dangerous product. Its

ingredients, including ephedra, alone and in conjunction with its other ingredients, including caffeine, synephrine, and salcinin, cause a panoply of serious health problems, including heatstroke, hypertension, heart palpitations, heart attacks, strokes, seizures, psychiatric problems, gastrointestinal effects, and permanent impairments. Over 100 deaths have been linked to ephedra.

45. Steve Bechler's use of Xenadrine RFA-1 killed him.

46. As a consequence of defendants' wrongful actions, which resulted in Steve Bechler's death, defendants are, pursuant to F.S.A. § 768.21, jointly and severally liable to plaintiff (in her various capacities set forth above) for the damages suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000. Such damages include, but are not necessarily limited to, (1) the value of Steve Bechler's lost support and services; (2) the loss of Steve's spousal companionship and protection; (3) the loss of Steve Bechler's parental companionship, instruction, and guidance; (4) the mental pain and suffering sustained by Kiley Bechler; (5) medical and funeral expenses; and (6) lost earnings, including but not limited to loss of prospective net accumulations which might reasonably have been expected.

47. The defendants' conduct was intentional, wanton, willful, malicious, and in blatant disregard of, or grossly negligent and reckless with respect to, Steve Bechler's life, health, well-being, and rights. Defendants are therefore additionally liable for punitive damages, in an amount to be determined at trial.

Count II
(Wrongful Death-Strict Liability in Tort -- Failure to Warn)

48. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 47 above as if fully set forth herein.

49. Defendants had a duty to warn Steve Bechler of the serious health risks that ephedra and Xenadrine RFA-1 pose. They failed to provide proper and adequate warning. For instance, nowhere on the product's label does it warn that use of ephedra or Xenadrine RFA-1 can result in death. Similarly, nowhere on the label does it warn that use of ephedra or Xenadrine RFA-1 can result in heatstroke, hypertension, heart palpitations, seizures, psychiatric problems, gastrointestinal effects, and permanent impairments. Nowhere on the label does this product warn of the exponential danger of mixing ephedra, caffeine, willow-bark synephrine, salicin, and other ingredients. Nowhere does it warn on the label that reducing food intake or engaging in exercise while also consuming ephedra or Xenadrine RFA-1 can be harmful or even fatal; to the contrary, the label encourages use of the product in conjunction with dieting and exercise. Defendants' advertising and marketing -- including their advertisements, promotions, and statements in various media and on the Internet -- are similarly flawed.

50. As a consequence of defendants' wrongful actions, which resulted in Steve Bechler's death, defendants are, pursuant to F.S.A. § 768.21, jointly and severally liable to plaintiff for the damages suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000. Such damages include, but are not necessarily limited to, (1) the value of Steve Bechler's lost support and services; (2) the loss of Steve's spousal companionship and protection; (3) the loss of Steve Bechler's parental companionship, instruction,

and guidance;(4) the mental pain and suffering sustained by Kiley Bechler; (5) medical and funeral expenses, and (6) lost earnings, including but not limited to loss of prospective net accumulations which might reasonably have been expected.

51. The conduct of the defendants was intentional, wanton, willful, malicious, and in blatant disregard of, or grossly negligent and reckless with respect to, Steve Bechler's life, health, well-being, and rights. Defendants are therefore additionally liable for punitive damages, in an amount to be determined at trial.

Count III
(Wrongful Death-Strict Liability in Tort -- Misrepresentations)

52. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 51 above as if fully set forth herein.

53. Defendants misrepresented the safety and efficacy of Xenadrine RFA-1. For instance, in addition to the misrepresentations described above -- in the form of failure to warn of known dangers -- the label additionally misrepresents the product as "clinically proven." In fact, what has been proven is that ephedra and Xenadrine RFA-1 are deadly, facts which defendants knew or should have known prior to authorizing the sale of their product. It was also misrepresented that the amount of ma huang has been "standardized" to 20 mg. ephedrine. In truth, the amount of ephedrine varies from pill to pill.

54. Steve Bechler relied, reasonably, justifiably, and in good faith, on defendants' misrepresentations concerning Xenadrine RFA-1.

55. As a consequence of defendants' wrongful actions, which resulted in Steve Bechler's death, defendants are, pursuant to F.S.A. § 768.21, jointly and severally liable to plaintiff for the

damages suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000. Such damages include, but are not necessarily limited to, (1) the value of Steve Bechler's lost support and services; (2) the loss of Steve's spousal companionship and protection; (3) the loss of Steve Bechler's parental companionship, instruction, and guidance; (4) the mental pain and suffering sustained by Kiley Bechler; (5) medical and funeral expenses; and (6) lost earnings, including but not limited to loss of prospective net accumulations which might reasonably have been expected.

56. The identified defendants' conduct was intentional, wanton, willful, malicious, and in blatant disregard of, or grossly negligent and reckless with respect to, Steve Bechler's life, health, well-being, and rights. Those defendants are therefore additionally liable for punitive damages, in an amount to be determined at trial.

Count IV
(Wrongful Death-Negligence)

57. Plaintiff repeats and realleges the allegations contained in Paragraphs 1- 56 above as if fully set forth herein.

58. Defendants owe a duty of care to users of Xenadrine RFA-1.

59. To the extent that defendants' misrepresentations and omissions with respect to ephedra and Xenadrine RFA-1 were made without knowledge of their falsity and without a conscious intent to deceive, then such misrepresentations and omissions were made negligently and/or recklessly.

60. To the extent that defendants were not consciously aware of the inherent, unreasonable dangerousness of Xenadrine RFA-1, defendants acted with gross negligence and

recklessness with respect to their testing, manufacture, distribution, marketing, and sale of Xenadrine RFA-1.

61. Steve Bechler's injuries and death were a direct and proximate result of such misrepresentations and omissions and the inherent, unreasonable dangerousness of Xenadrine RFA-1.

62. As a consequence of defendants' wrongful actions, which resulted in Steve Bechler's death, defendants are, pursuant to F.S.A. § 768 21, jointly and severally liable to plaintiff for the damages suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000. Such damages include, but are not necessarily limited to, (1) the value of Steve Bechler's lost support and services; (2) the loss of Steve's spousal companionship and protection; (3) the loss of Steve Bechler's parental companionship, instruction, and guidance; (4) the mental pain and suffering sustained by Kiley Bechler; (5) medical and funeral expenses; and (6) lost earnings, including but not limited to loss of prospective net accumulations which might reasonably have been expected.

63. Defendants' conduct was intentional, wanton, willful, malicious, and in blatant disregard of, or grossly negligent and reckless with respect to, Steve Bechler's life, health, well-being, and rights. Defendants are therefore additionally liable for punitive damages, in an amount to be determined at trial.

Count V
(Wrongful Death-Breach of Express Warranty -- F.S.A. § 672.313)

64. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 63 above as if fully set forth herein.

65. Defendant XYZ Corp. breached express warranties on the label of, and/or advertising for, the product Xenadrine RFA-1 about its safety and efficacy, including but not limited to warranties that it is "clinically proven," that it contained only precise, delineated amounts of ephedrine per "serving," and that the product worked "best" when used in conjunction with a diet and exercise program.

66. As a direct and proximate result of such breaches, Steve Bechler died.

67. As a consequence of the foregoing which resulted in Steve Bechler's death, defendant XYZ Corporation is, pursuant to F.S.A. § 768.21, liable to plaintiff for the damages suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000. Such damages include, but are not necessarily limited to, (1) the value of Steve Bechler's lost support and services; (2) the loss of Steve's spousal companionship and protection; (3) the loss of Steve Bechler's parental companionship, instruction, and guidance; (4) the mental pain and suffering sustained by Kiley Bechler; (5) medical and funeral expenses; and (6) lost earnings, including but not limited to loss of prospective net accumulations which might reasonably have been expected.

Count VI
(Wrongful Death-Breach of Implied Warranty -- F.S.A. § 672.314)

64. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 - 63 above as if fully set forth herein.

65. Through its conduct as described above, defendant XYZ Corp. breached an implied warranty that Xenadrine RFA-1 is safe and fit for its ordinary and intended use as a dietary supplement and weight loss "catalyst."

66. As a direct and proximate result of such breaches, Steve Bechler sustained injuries and died.

67. As a consequence of the foregoing which resulted in Steve Bechler's death, XYZ Corporation is, pursuant to F.S.A. § 768.21, liable to plaintiff for the damages suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000. Such damages include, but are not necessarily limited to, (1) the value of Steve Bechler's lost support and services; (2) the loss of Steve's spousal companionship and protection; (3) the loss of Steve Bechler's parental companionship, instruction, and guidance, (4) the mental pain and suffering sustained by Kiley Bechler; (5) medical and funeral expenses; and (6) lost earnings, including but not limited to loss of prospective net accumulations which might reasonably have been expected.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment against defendants, jointly and severally, as follows:

1. On plaintiff's First Count, awarding against defendants jointly and severally, the damages that plaintiff and the survivors suffered as a result of defendants' actions, the amount of

such damages to be determined at trial, but in any event no less than \$100,000,000, plus punitive damages in an amount to be determined at trial.

2. On plaintiff's Second Count, awarding against defendants jointly and severally, the damages that plaintiff and the survivors suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000, plus punitive damages in an amount to be determined at trial.

3. On plaintiff's Third Count, awarding against defendants, jointly and severally, the damages that plaintiff and the survivors suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000, plus punitive damages in an amount to be determined at trial.

4. On plaintiff's Fourth Count, awarding against defendants jointly and severally, the damages that plaintiff and the survivors suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000, plus punitive damages in an amount to be determined at trial.

5. On plaintiff's Fifth Count, awarding against defendant XYZ Corp., the damages that plaintiff and the survivors suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000.

6. On plaintiff's Sixth Count, awarding against defendant XYZ Corp., the damages that plaintiff and the survivors suffered as a result of defendants' actions, the amount of such damages to be determined at trial, but in any event no less than \$100,000,000.

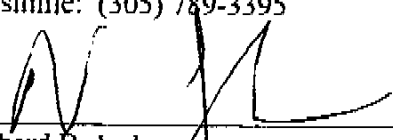
7. Awarding plaintiff interest, costs and such other and further relief as this Court deems just and proper.

Plaintiff demands a trial by jury as to all issues so triable.

Dated: July 16, 2003

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