

## **Karen Barth Menzies**

**Let's begin at the end. You've helped bring some of the biggest corporations on the planet to their knees – who are out there as we speak saying all this stuff about the SSRIs has been caused by plaintiffs law firms chasing money.**

Well I think my first reaction is that we're easy scapegoats especially in today's climate. Plaintiffs' attorneys are easy to throw rocks at - nobody ever objects to that. But I've been working on this issue for so long that I've learned that it doesn't require compromising principles to have an effect. I think we have had an effect through nothing else than pure stamina and commitment. If we didn't have a strong belief in it, we would have quit a long time ago – it requires totally dedicated commitment to trying to expose the issue. Continuing to see more and more of the fraud, and the harm increased our resolve. But there's a lot of attorneys that I have talked to that wouldn't have the same dedication to it. For me anyway it comes from the more I see the more committed I am.

But it also needs a lot of stamina and patience – there are so many times when you can feel forget it. You can lead a horse to water but you can't make it drink, and at points I get really frustrated with the public and society and even the victims to some extent. They continue to be naïve and it seems like they want to be naïve. How much more can we do to get them to be sceptical? Should we let them choose to go on oblivious and believe what they want to believe because they don't want to accept how negative the truth is? And I have mixed feelings with the whole mental illness thing is really a society driven approach to handle problems in life generally which people like to call illness.

**How come you've kept at it given that loads of other people who've been involved and have seen the documents haven't kept on the way you have?**

On a personal level there is the desire to make a difference and work towards a cause. I consider it a luxury to believe in what I do. I don't want to do it forever but I want to feel that with as much time as we commit to it that we did somehow make a difference in a way that at least reveals some truth that had been unjustly hidden. I used to think I wanted to be a trial lawyer but I don't any more, I just want to know that what we made a difference, at least for somebody. Otherwise I wouldn't be able to work that hard, it's too much of a sacrifice, personally.

**What do you sacrifice?**

A lot. My priority is with my friends and family and there's a huge sacrifice there. I don't consider myself driven the way some people are for prominence or power or control and a career. I would much rather enjoy quality time with people I care about. But you know if I'm going to put this much time into it and have a career and make that sacrifice I want to feel like something we're all working on as a team has made some sort of a difference.

Sometimes we put in 100 hour weeks, sometimes for weeks on end. The most I've ever stayed up straight is three or four nights in a row working to meet deadlines for a trial. Not sleeping, not once – just straight on. It really goes in swings. It's not uncommon for us to work 42 out of 44 days straight and each of those days average between 15 and 18 hours a day, no weekends off, not even a day off, maybe half a day here or there but then it all calms down and you might get about four weeks or five weeks where you work more of a normal schedule. This summer I had almost two months where I didn't work a weekend and that is a record in the last five years.

It's so hard to find people that it means as much to so it seems you have to do a lot of it yourself. It always seems to fall back on Cindy and me because other people even though they might be able to do it they're not willing to put in the time. For us we don't want to work so hard and then give up too early so that all the work you did before is wasted, it's not because you didn't put in that extra how many hours to make it that much better or to make it as perfect as you could. I would say my husband always says 'well you love what you love your job', I can never say I love my job because it's too much. I would say I'd love my job if it wasn't so overwhelming in terms of the amount of time.

### **How did you get into law?**

I was interested in juvenile justice and government work, civics, and history which drew me in to the idea of working as an attorney. I took a semester off of college and decided to look for a law firm to see what it was like on a daily basis. My uncle's a lawyer, and my grandpa, but I was not close to them geographically so I had no access to what it was like to be a lawyer. I thought I'd get a job, doing anything. I was getting people coffee, and making copies of papers and ordering of plans – getting an idea of what the law firm daily life was like – and I hated it.

This was in Baum Hedlund but they weren't called that at the time. I was 19 I think. I was working in a restaurant nearby and this guy started talking to me and asking me what I wanted to do and I said I wanted to try and get a job in a law firm. He said his friend worked in a law firm and maybe he could help so he had me had me call Mo my late boss so I called her up and she hired me and I just was everybody's assistant. That was 1987.

I did everything, reception, I painted Michael's office etc. I didn't like it because at the time they practised straight PI – they were getting into the aviation stuff but they did a lot of car crashes and I hated that. Not to generalise but it just seemed like a lot of people suing for some quick money. Anything to get some quick money. I didn't like the environment.

So I went back and finished school, and when I went back to school I still couldn't get away from the interest I had. I worked for the governor and I was interested

in juvenile justice – criminology, sociology and psychology. Actually I was originally going to be a psychiatrist.

I guess it helps explain why I'm still into this stuff. I studied psychology and a lot of clinical psychology. I haven't minored in it although I was two years into it but none of it seemed to hold water to me. It was too stereotypical, it tried to judge people, it didn't seem to involve any sort of legitimate science and I kept struggling with that. I had this professor who called himself a symbolic interactionist, a sociology instructor, who talked a lot about labelling theories and stuff like that. That to me seemed true, if somebody is labelled as something they will tend to follow along those lines. That all made sense but the psychology stuff just never seemed to be reasonable.

Ironically part of it was because I was just getting to know my husband at the time and he defied all of their theories. Based on what he went through in his life, he would be characterised as completely screwed up but he didn't meet anything of what they said he would be like.

#### **You then had to go back and do law?**

I finished school and I went to work. Meanwhile I continued taking classes in criminology and getting involved in victims groups and Vietnam veterans and I studied a lot of Vietnam history and I had some professors and some of those victims that I related to really well and they encouraged me to follow law and then government work or political work or things like that. I could never get away from the justice side of it that I did like and then I realised that PI law is not all of law and you can do other types of law.

#### **It seems a bit odd then that you think you could get back on that track in the same law firm that seemed to epitomise everything that was wrong.**

But the law firm was changing. They were getting much more involved in the more complex litigation than car crashes. And they were developing in their own way and I maintained my friendship with the guys there because we were really good friends but not with the intention to go back but just good friends.

#### **And law college?**

I went to U C Davies because it's extremely liberal. It's small and public and cheap. That made the decision for me because I just couldn't afford to do otherwise. I worked for three years before I went to law school just to enable me to go.

As work experience I thought it would be good to get some more experience in a different type of law firm. So at that point I wanted to work for a trial lawyer but it didn't matter. I went to Houston and just went door to door trying to find a job, with my resume. This was 1990.

I ended up in Andy Vickery's office and said I had worked for the governor and other stuff but we started talking and seemed to get along and it turned out we has an interest in basketball. At that stage it was Vickery, Kilbride, Gilmore and Vickery

Actually I think that Michael Baum may have given me their name because he may have worked on a case with BJ Kilbride. I was so desperate. I literally was looking for jobs in health clubs, at a gas station, restaurants – I could not find a job anywhere, so I said to Michael because he was my friend 'do you know anybody in Houston' and I just showed up at their doorstep.

Andy's a professor at heart in some ways and he definitely adopted that role with me. He saw me as wide-eyed, young, wants to go to law school, willing to do anything. I told him I didn't care what he had me do – receptionist, everything, I just wanted experience. I don't know why he hired me. Maybe he just wanted to help a kid, simple as that. That's in his personality. When I worked for him he really adopted that role. He was in a position to do so and he took me on everything. I went on depositions with him, I sat at trial counsel table with him, it was almost like he was helping me more than I was helping him. I was holding his bag he always reminds me of that! So that was two years with Andy and then I left and went back to Baum Hedlund and worked for Skip again.

Mickey Kannanak, Skip and John Cole were the senior partners there at that point. Michael Baum had just finished law school. He became a partner the first summer I worked for them so it was Cole, Kannanak, Murgatroyd and Baum. They split up with Cole and then brought in Hedlund. So I went back and worked for Skip for little under a year, went to trial with him right away and that was cool. It was really cool because I got to go to trial with Andy and with Skip and be a co-counsel in a trial about a full exploding gas tank school bus crash in Kentucky. We worked with some very prominent trial attorneys who I still know and are even more prominent now and I learnt a lot.

Then I went back to school for three years but I did stuff in the summers, clerked and worked for the Attorney General, and worked for the DA. I didn't plan to go back to Baum Hedlund. I figured if I went back to Baum Hedlund I wouldn't get to be in the court room. At that point I still wanted to be a trial lawyer. All I wanted to be was in the court room. So I was working for the DA, but I didn't like that. I don't agree ideologically with the DA's office and I had a really hard time with all the drug laws and the sentencing guidelines for the drug laws. That's all you did and it wasn't for me.

I believe in the fourth amendment, which is about due process, like search and seizure laws, and things like that. In the DA's office you're always trying to get cops out from under their violations. I did fine with it and it really taught me how to be able to research and write and develop an argument, even though I disagreed with it, in a way that's persuasive. I had good feedback even from

judges. As a student you can do preliminary hearings and trial room work and so I did that and I represented prisoners and civil rights cases and was able to go and appear in federal court in those cases and that's what I liked. But I didn't want to stay in Sacramento, and I didn't want to stay at the DA's.

**So this was around 95; had you heard of the word Prozac at this point?**

Yes, when I worked for Skip I worked on the Prozac cases, before I went to law school. That's when we got some of the first ones in. So that was in 1991. He had had a number of cases that came in, like the Del Shannon case, and then some others that were pretty shaky fact-wise. Skip was involved because he knew a friend who knew Del Shannon. Skip being the personality that he is decided to help out and kind of stumbled into the cases to a degree.

The firm had done some Ritalin cases - John Cole, when I was there in 87 and 88 had some Ritalin cases but I don't remember them being heavily litigated. I remember that John was big into the media and so he had some media related to the Ritalin stuff but that sort of fell away. I don't know that they ever got any kind of recovery related to the Ritalin cases.

**When you came back the firm had got some of the Prozac cases?**

Well we were involved in the MDL cases. I was paralegal and secretary for Skip so I talked to the clients and stuff like that.

I remember one case where this young man who was probably 20, was on Prozac not long, living in France at the time. His mom was a wealthy woman from Northern California, so she had a lot more control over the physicians than a normal patient would. She would call up the doctors and say 'send him a prescription, he's not doing good' and the doctors didn't exercise their judgement very well - they'd just send him a prescription. So they sent him a Prozac prescription and he ended up in his hotel room or apartment and audiotaped the whole thing, which I remember listening to and what he did was he sliced open the top of the back of his girlfriend and basically pulled the skin completely down, killed her obviously, then he cut off his left testicle or maybe his penis and his hand and then stabbed himself in the eye before ultimately dying. Obviously that would make a bit of a mark. I don't remember the other cases in so much detail. I'm sure it had a lot to do with us listening to that tape. So, I would never take the drug. That was my first exposure to it.

But just the idea of taking a drug for personal problems didn't make sense to me. Like that's an easy way out, it's like anything else, you need to face it and deal with it, anyway that's about it as far I stand.

But as regards litigation, the area did not look promising or lucrative. I'm just going from memory again, as I wasn't an attorney I didn't have that kind of viewpoint of it, but we didn't expect to make money on the cases. We didn't know how strong the cases were, we were trying to track down whatever we

could on the science to help establish it. Obviously we knew Teicher's article and focused a lot on that and tried to see what else would come of those kinds of studies - if people would take up where they left off and make these legitimate cases.

It was almost like pro-bono work. We didn't know if they would go anywhere. It was a plaintiffs firm and sometimes you have to develop and find out if a case is legitimate and if it's not legitimate it just falls by the wayside and that's the nature of contingency work - you lose and you realise it's not a viable case. At that time I don't think we knew if they were viable cases, we just didn't know. We thought maybe it was and maybe the science would develop and we would just see what would happen.

**Back in 91 both Public Citizen and the Citizens' Commission on Human Rights have petitioned the FDA about Prozac. This led the American Psychiatric Association to get involved and say hey this is all just a fuss got up by the Church of Scientology. Now you guys had about 15 cases out of about a 150 that were in the MDL altogether. Did any of the other legal firms have any links to CCHR or Scientology or is it just your firm's connection into all this that provides the basis for what APA was saying?**

No not at all. I didn't even know what the CCHR was until a few years ago. Definitely not until I came back. I knew that there were some people at the firm who were Scientologists but it wasn't connected to the church at all.

I thought APA's accusations were directed at CCHR and Public Citizen rather than at us. I didn't know anything about the Church at the time but I've learnt a little bit more about over the years I've been in California. What I remember was the CCHR was against psychiatry. And so my understanding of what APA were saying was that CCHR against psychiatry and using the fuss about Prozac as one of their avenues to attack psychiatry. I didn't know that they were attacking the law firms back in 92. I know that much later law firms for the companies would send discovery out to our clients with all these questions that just assumed that we were completely linked with the Church of Scientology or CCHR. They assume because there's people at our firm who are Scientologists that we are connected to or working with or working for CCHR but I'm not aware of any of that. Since I have been at this firm, it's just not accurate.

Maybe the people who are Scientologists at the firm think that's an additional good thing about the case but it's never driven the cases. The thing is always about the science. The difficulty was trying to wait for the research or find doctors that would help us make our case. And we didn't know if it was gonna develop - we didn't know how legitimate it was.

In fact I thought the Scientology link was old news that didn't work but now I've heard more in the last few months about it and I think it's really a sign of more desperation.

**So, in when you come back to Baum Hedlund, is the Forsyth case active or is it just a few boxes in the corner?**

Cindy was working on it. She came in 94, when I was in school so when I got back she was there. I started working for them in 95, a month after Skip had his retirement party. He came back a few months later and opened up a class action department. So I really didn't do much when I first got back on the SSRI stuff – it was never a case of we'd better gear up for these cases because this is where our bread and butter is.

After Bill Downey passed away, they brought me in to the SSRI cases. Bill had been doing them and there was no-one else, so after Bill passed away they brought me in to work on those and we did the Forsyth case. The original trial was going to be in October 98 and they brought me in in September. Bill had passed away in June. When I got into the Forsyth case I was furiously reading everything on antidepressants and the depositions so thank god it was postponed and I could at least get a little more involved –

I wasn't involved in any of the summary judgement stuff. I was reading it to get up to speed. Obviously I knew the background to the Prozac cases.

**A year before Cindy and Bill and Andy Vickery had met me at an APA meeting and asked if I wanted to get involved. How did Baum-Hedlund meet up with Andy?**

Well that goes back though. Andy had concerns about Paul Smith who had done the first Prozac cases and I maintained contact with Andy because we were good friends. He called me up and asked 'hey aren't you with Baum Hedlund and don't you work for Bill Downey?' I said yes and he said 'I'm interested in these Prozac cases, what's your take on them?' I said well I worked on them years ago but I haven't done too much on them. He said 'I'm thinking of filing this complaint against Paul Smith because I had this client who came to me'.

He sent me the complaint, but you know I was just a young lawyer and I said to him these are good people and to them I said he was a good guy. We had resolved some cases, and I think we may have only had the Forsyth case left. I don't know if we were winding our way out or what but however it was that was the connection between Baum Hedlund and Andy. Both firms suspected plaintiffs attorneys who want to jump in because there might be some quick money. Andy may have known them beforehand but anyway after Bill passed away we decided we needed a trial lawyer.

**There was early talk of a settlement in the case?**

Well I wasn't involved in the case then but I know there was a talk of settlement and as we do with all cases. We try to let our clients know realistically what the risk is of going to trial - that's with every trial. It doesn't matter how good a case is because you've no idea what the jury will do. It's a crap shoot and so we had

discussed that very seriously with our clients. Judge Kay really wanted us to settle the case.

This has been consistent with all the cases that I've worked on, the judges really are trying to impress upon the parties that it's in everyone's best interest. It's not that the judge sees one side or the other as better or worse it's just that you guys need to take a step away from the fighting and recognise that if the case has gone this far it's far better that everyone resolves it because it'll be more likely resolved reflecting the merits of the case than if it goes to jury. We're all experienced attorneys and we know that in the case of a settlement what we can expect given the downsides and strengths of the case and you end up with a compromise that reflects that more so than with a jury, who could go crazy and give the plaintiff way more than the case would seem to merit and vice versa. So the judge was pushing for it.

But the Forsyth's absolutely wanted their day in court. It wasn't so much a matter of vindication but they didn't need the money - their father had left them a lot of money. So it was for the principle of it. They saw that so many of the Prozac cases were being settled quietly, and the issue of Prozac and suicide was seeming to go away and I think they wanted to do what they could to bring public awareness to this issue. I think they took it as a sort of higher cause to bring this out into the public and be one of the plaintiffs who could take on the risk financially of going to trial. So the Forsyth's didn't settle and we went to trial.

**You said the jury process involves a crap shoot factor, but it must get quite scary for the company also?**

Oh yes and they recognise that too, I mean so many cases are settled on the court house steps and it's not because the SSRI cases are bad for the companies - my god if there were ever difficult cases for plaintiffs to win it's these.

Most plaintiffs companies won't touch them with a ten foot pole. Because you're dealing with such a subjective issue, a mental health issue and a drug and you can't take a test and say to somebody we see cancer cells, or we see a broken arm or whatever. It's not an objectively verifiable condition and that cuts both ways and so pharmaceutical companies are scared to death. Society is predisposed to think of mental illness as those people who are crazy and would do these crazy things anyway and they pass them off as aren't all those people screwed up anyway. If somebody has a mental illness then they have a licence to do whatever the hell they want to, even though it's totally not in their character. This is just ignorance, until it comes to a law suit when companies portray people as totally susceptible to killing people their whole life long or killing themselves.

So no legal firm will touch these cases which as far from the clear liability cases, which our aviation cases were as you could get. That's what was so funny because our firm used to deal with these extremely clear liability cases - planes



you know aren't supposed to fall out of the sky, and if one does there is a reason - something went wrong. Whereas in these types of cases you don't know if something went wrong and it becomes that much more difficult to prove it. So getting back to the point on that the drug companies in these types of cases you would think would be more inclined to try them because they're so much more difficult for us to win but even they're not willing to take that risk.

This has caused a huge dilemma for us. One of the most difficult things about doing this type of litigation is saying no to so many people. They don't understand it. Just two weeks ago I was on the phone with a dad who's daughter attempted suicide and you know it puts us in a difficult position because they're so difficult to prove in litigation so you have to get the cleanest cases, and only those, and you just can't take all those others. Even though you know there's so many times where I believe 100% based on my experience on hearing story after story that they're showing the symptoms, but if it's not a case we can prove, we just can't take it. And I have to tell these parents and I tell them a hundred times over, most recently with a man who was yelling at me, that 'I'm not a doctor, but if my opinion matters at all, I do think that this drug caused your daughter to try and commit suicide but my analysis as a person and my analysis as an attorney are two different things, and can I prove it – no”.

**The company has too much scope to throw sand in the jury's face?**

Yeah that's what I mean by not being able to prove it. We had a girl who'd had a few thoughts about harming herself beforehand and when I looked at it I thought it was really a matter of this young woman exhibiting behaviour that was trying to get attention and she was having a difficult time with her parents, and in particular her father. But it's so difficult for us to handle what the drug companies can make of this scenario, so that at least the way the state of the evidence is now, we can't take those types of cases. One of the biggest injustices in this whole issue is all those individuals who are incarcerated and have had violent reactions. We can't touch those with a ten-foot pole.

Every week I get letters from people. Some of them are crazy and they're just trumping up stuff, but others are crystal clear, and you know if anybody could represent them it would be us, but we can't do it. It's so frustrating and difficult to try to explain to people. It's almost like they need the litigation to prove to themselves that it wasn't their loved ones and I have to sit there and try to explain to them that it's a whole different analysis.

**So the Forsyth case happens and you lose. Where did the appeal come from?**

The firm had taken such a bath cost wise on Forsyth that there was not a positive feel towards the viability of these cases but so we held on to them especially Cindy. We never let them go, but the time was not right for the seniors of our firm to put money and time into them because they were asking how much more money do you want us to lose? So that's why I always laugh when we get

accused of being just in it to make money because business-wise these were not a good business decision.

It would be nice to think maybe some day they will look better but I doubt it - not compared to the money we can make on other types of cases. On other cases we make money and don't spend nearly the same amount of time on them, and don't expose ourselves to the heartache and ugliness of the adversarial system.

The hemophilia cases we took on were very similar to the SSRI cases - gloves off, and in my opinion unethical and unprofessional attorneys on the other side. They didn't distinguish between themselves and the client - they would do whatever the client wanted them to do no matter what. Legal representation is supposed to be somewhat of a barrier to that at least if you're following the rules. I find Pfizer's counsel to be the same as the ones in the hemophilia cases and Glaxo's close.

**Earlier was you didn't think the SSRI legal work regarding Prozac 12 years ago couldn't have got the head of steam up this issue has now. What's the difference between 12 years ago and now?**

Well I think 12 years ago we felt like we needed to wait for the evidence to develop because at the time we thought maybe they just didn't know, maybe this was a phenomena they were not aware of and then Teicher sees it and that's what I meant when I said we had to wait for the science to develop so that we could prove that it does exist. But now the difference is that they've known it all along – since way before Teicher. And so it became a matter of not waiting and hoping that the science would develop but to expose what was already there, what was already known.

In a sense the cases have changed from straight plaintiffs' cases to more of a fraud type case. Through the litigation we're trying to establish that they knew – you always have that element, they can't warn about something they don't know about - but I didn't think early on that they were hiding it. I thought that they were maybe ignoring what was in the literature, and ignoring what people reported, just pretending that it didn't exist and were avoiding the warning as long as they could and I thought maybe the science would develop to the point where it became clear that they couldn't not warn about it any more. I guess I always thought that about a lot of product liability stuff, from fen-phen, to the breast implant cases, now I'm a lot more cynical.

**Do you think other things have changed as well such as the issue of the life cycle of the drug as well, that this is an older group of drugs coming to the end of their life cycle, and there's the issue of a public reaction to things like direct to consumer advertising and a wider concern about the pharmaceutical companies that probably hadn't been there before?**

Absolutely. Back in the early 90s we didn't have any direct to consumer advertising, and I think the public have had mixed reactions to that. It makes

sense to some people but others are disgusted. It feels like commercialised medicine. The more they do that type of advertising where you look at the ad and it just feels like everybody at some point in their life according to what they're saying would be on these drugs, the more there's been a backlash. A lot of doctors I've talked to are frustrated because if you don't give the patients the drug that they want they just go to the next doctor. The HMOs and other care plans have also done a lot to change people's views of the medical profession and the kind of care that they get.

Plus Pharma has had a lot of really bad hits. The exposure over the Neurontin stuff is just one recent example. All the recalls. When you look at the plaintiffs bar, you see a whole cottage industry of pharmaceutical plaintiff attorneys. There are so many people who don't actually practice the cases but they're looking for the next fen-phen. You see all the involvement of the plaintiff sharks and they're very competitive. I've been monitoring the litigation to see if we would be susceptible to having to fight for control over our cases and if they would be taken over by some of the big firms like you know Novo Weiss or Sol Weiss and those guys because that's what they'd tend to do.

But like I said before we've been a little bit insulated from the nature of the cases because they scared them away at least to this point. It's changed since the Spitzer case. When Andy won the Tobin verdict I think that woke up a bunch of the pharmaceutical plaintiffs attorneys. Some of the older wiser plaintiff attorneys are reminding some of these referral firms to be careful because they'll spend a bunch of money on advertising and get a bunch of cases in and they don't know if they're legit or not. They'll find a source for referrals and hope they get a case, well that's not practicing law but a lot of attorneys have been doing that.

That was a result of seeing successful litigation against pharmaceutical companies but you cannot be successful unless there is something wrong there. You cannot take on a pharmaceutical company and win if there's not something very seriously wrong because they're just way too powerful. But the successful cases there were led to more people hearing about people being harmed by the drugs and about pharmaceutical companies hiding what they know about the drugs. And you put this kind of adverse publicity together with direct to consumer advertising, and many people began to get suspicious of what Pharma's true interests were. They've completely commercialised the medical profession and I think at least some people are starting to say this.

**In attempting to move the issues forward you guys have linked in with people from Congress, and with the New York State Attorney's office - why?**

It goes back to our intention to try to raise public awareness of the issue. Up until about 2 years ago nobody cared. Every single person that you talked to would scoff at us saying you're just lawyers trying to make money and there's no legitimacy to what you're saying. You couldn't even get the media to even give

us a one liner or anything. But we knew that in America what drive's people's perceptions is what's reported in the media so we did everything we could to keep any media contacts we had. Mostly through Cindy.

**Did the Prozac appeal play a big part in the way you were thinking? I mean, you two put in a huge amount of work in that - did you end up being a team at the end of that?**

At the Forsyth trial we became a team. We were committed together as a group, Cindy, Skip and I. Afterwards the haemophilia cases took over and Cindy was left on her own working on the remnants of Prozac cases that were left in the office with no attorney on them. Cindy and I talked about trying to revive those in a way where we could put more attention on them and how would we do that and we developed with Andy Vickery an agreement where we would contract out and Andy would pay 50% of our salary. Baum Hedlund said they were fine with that idea because at the time they couldn't justify it. It was very short lived, and it fell away because Andy had some difficulties in his office but Cindy and I continued along with the court case with Lilly and put in a great deal of effort on that appeal.

Writing the brief for the fraud case wasn't something significantly different from what you normally do. But the case required unbelievable effort because it involved completely unobtainable evidence. The nature of the law suit itself was all privileged because we were alleging fraud against Lilly and it's attorneys – in-house and outside – so everything was privileged. But it was interesting how we found the information. It was basic stamina and willingness to try and think of things that hadn't been thought of before, turn up every rock you can even think of. I remember sitting down with Cindy and Skip – what have we not thought of.

For example on the R-fluoxetine patent, well into the case, we'd already deposed the CEO of Sepracor who was on the patent. We'd talked to Dr Teicher and we were felt we were running up against things that indicated there was something missing. I remember at one point, Cindy said 'you know we still never obtained communication with their patent holder – I wonder if there's anything there'. We had gotten all these discovery responses but none pointed to any evidence prior to 97. There were innocuous statements like 'oh they're considering the development of this patent etc' but we needed to show back in 1992 and 91 that they failed to provide responsive evidence and documents relating to this very issue. The MDL had asked for just this evidence and Lilly did not provide it and that was what the fraud was based on.

We felt like we were running into a wall. Cindy said 'let's see if we can try and find that third patent holder, maybe there's something there'. And so she found him - he was up in Northern California, and he talked to us and he said 'yeah I met with Teicher and I've forgotten the other guy's name, back in 91 or 92 and talked about the patent and we all sat down and in fact I think I have my notes from that'. Would you be willing to provide them? We got his notes, and all that

evidence was there and so we had to go back to discovery and figure out why didn't Lilly produce this?

We had to do motion to compel after motion to compel for everything, and what it boiled down to was that our discovery request which was for all communications between you and any of the patent holders for fluoxetine at any time was read by them in terms of the patent being pending since 91 but not granted till 97 so they interpreted our question as well these guys weren't actually patent holders because it was only a pending patent. The judge was not happy, we were totally pissed off. It was a classic example of how these guys get around producing documents. So anyway they produced the documents, some very powerful evidence, but it was the tip of the iceberg. We were on the verge of getting much more, after further motions to compel, some very hard fought stuff from around this time period and at that point the cases were resolved. So we never saw all of it.

### **How did this lead into the Zoloft cases?**

The Forsyth fraud case was the turning point for the firm because we had changed the books on our costs on Forsyth case, we had regained our ground and so we got approval from the firm to continue working on the cases. We were still working out some of the Prozac cases and then the Motus case came along. Skip and Cindy and I spent tons of time in New York focussed on Pfizer.

Meanwhile Don Farber was doing Paxil and we routed any Paxil plaintiffs over to Don. Don began getting a lot of people contact him with a withdrawal problem and at the same time we were seeing in the course of the Pfizer production very serious problem with withdrawal, both with Zoloft, but also with Paxil and so decided to do something for these people.

Clearly there was a problem but we said we couldn't justify the cost which was a few hundred thousand dollars for each case and we couldn't file these on an individual basis. So we filed a class action and 20-20 covered it in a show and after that the whole office was shut down - everybody was manning phones for a whole week. We had thousands of calls that week and it continued. We had to develop a department to handle the cases, which later expanded to multiple firms and it became a huge source of litigation but we just fell into it in a way

### **It's an awful lot easier though I would have thought to argue these cases than to argue the suicide cases?**

We were talking about clear liability earlier, and this is so much closer to clear liability but we still have the problem of the companies characterising our victims as crazy people. But its not part of being crazy or nervous to have shocks, electric zaps and things like that and so this has made it harder for the companies but still their defences have remained entirely the same. I don't know if they just couldn't come up with anything better but they were defending them exactly the way they defend the suicide cases - they dig up evidence from a

person's whole life and everything in their life and mischaracterise these people as crazy people. We'll see how it plays out.

A lot stemmed from Andy's verdict in the Tobin case. A lot of people contacted us because they heard the Tobin verdict and wanted off of Paxil because they were worried about changes in themselves and made the link to the drug and then when they tried to stop found they had the whole host of other problems. We also had many withdrawal people who wanted off the drug because when they first started it they exhibited that agitated behaviour and couldn't deal with it.

### **When did Cindy and Skip and you begin to think about going to Congress and engaging more widely?**

Well that just came from our efforts to find people who would listen to us – anybody who was willing to listen, any audience, anybody who was willing – we would give whatever information we could to anyone and everyone we could find. So after the FDA hearing in 2004, and the Congressional investigations, we contacted them and said we have a lot of information would you be willing to meet with us? With the congressional investigations in particular we had to do it in the quietest most legitimate way possible where we don't compromise what they're doing in a way and we didn't have clients interests compromised either. So it was trying to let them know what stuff to ask for and when they don't get certain things how to know what they're missing and how to interpret what they get. The idea was to help them to catch up – to educate themselves – because it had taken us 12 or 14 years to get to understand what we had. Anyway we just didn't want this opportunity to be missed.

One of the first opportunities was when I was asked to present to the California Senate and basically said to them “put me out of business”. They called afterwards and I met with them and began to work out what could be done between me having my hands tied and aware they had only part of the picture.

With the media we've always seen the media as the best way to increase awareness of the issue. This has meant at times that we were happy not to be in a particular media piece even though we were behind it or helped provide information, Cindy in particular. Our promotions department obviously want us quoted as much as possible because you know their agenda is to promote the firm and so we sometimes have to explain that to the promotions department that we don't want to be in this one. We also have to get over a bias that some in the media have which is they think that we're doing it because we want more cases

Another issue has been to find other law firms that are willing to commit themselves to doing the cases right. I think the biggest fear we have is that somebody's gonna come in and do it poorly and then we'll have to fight against the precedents they set. In the withdrawal cases we saw others jump in and file their case – class acts – copycat cases. I had a couple contact me with this sort of holier than thou – ‘we don't need you’ - and I'd listen and say we'd be happy to

work with you if you're going in on these cases, let's talk. But they'd respond 'thanks but we'll call'. Then inevitably after they run the first round of discovery or something like that they realise they're in over their heads and come back. Those who have been adversarial to us in the beginning have always come back and asked for help.

After our withdrawal case, we did something unusual for the pharmaceutical bar, where plaintiffs' lawyers all defend their territory. I went out trying to network, going to seminars to find people who would commit to doing it right - we knew we needed help.

Well we re-committed ourselves to the cases with Motus. We felt like we'd got ourselves back even with Forsyth after the fraud on the court case. Cindy and I, especially Cindy, said let's go talk to the seniors of the firm and say we really want to work on this case as we think they're good cases and it's something the company can and should do. And the company said yes. That's 7 years ago now. After that it was full force ahead, even we had no other Zoloft case and we were spending so much money on one case we had to tell the others who were supposed to bring the cases in to get some Zoloft cases so we can justify the hundreds of thousands of dollars we were spending.

Then when the Paxil withdrawal cases were filed that broke open the flood gates. Then we had to remind people that we weren't just withdrawal lawyers, that we'd been doing suicide cases since Prozac. I think we had close to a hundred suicide or suicide attempt cases and about three or four thousand withdrawal cases. There was a time when the Motus case was thrown out and someone said you must be in it for the money that I laughed, because at that point we were pretty deep in a hole money-wise. It was only when Pfizer settled that things became a little more comfortable.