UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

MELISSA ANN BUCCY, INDIVIDUALLY AND AS EXECUTOR OF THE ESTATE OF JOEL URBAN BUCCY, and SAWYER BUCCY and CAMERON JOEL BUCCY, INDIVIDUALLY AND AS HEIRS of the ESTATE OF JOEL URBAN BUCCY,	§	
Plaintiffs,	§	NO. 16-CV- 02218
v.	§	
ABBOTT LABORATORIES d/b/a ABBOTT DIABETES CARE, INSULET CORPORATION, and RGH ENTERPRISES INC., d/b/a EDGEPARK MEDICAL SUPPLIES, INC	§	
Defendants.	§	**Jury Demand**

COMPLAINT

I. INTRODUCTION

1. This is a wrongful death suit under 740 ILCS 180 arising from the death of JOEL URBAN BUCCY. Plaintiffs allege claims for strict products liability, negligence, negligent misrepresentation and/or fraud, Breach of Express Warranty, Breach of Implied Warranty of Merchantability, Negligence Per Se, Fraudulent Concealment and Illinois Consumer Fraud and Deceptive Practices Act.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § 1332(a)(1) because diversity exists between the parties and the amounts in controversy are within the jurisdictional limits of this Court.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because one of the Defendants maintains its principal place of business in this district and a substantial part of the events or omissions giving rise to the claims arose in this district.

III. PARTIES

A. Plaintiffs

4. Plaintiff, MELISSA ANN BUCCY is a resident of the State of Texas and is the widow of JOEL URBAN BUCCY. MELISSA ANN BUCCY brings this suit in her individual capacity and as Executor of the Estate of her deceased husband, JOEL URBAN BUCCY.

5. Plaintiff, SAWYER BUCCY is a resident of the State of Texas and is the natural son of JOEL URBAN BUCCY, Deceased.

6. Plaintiff, CAMERON JOEL BUCCY is a resident of the State of Texas and is the natural daughter of JOEL URBAN BUCCY, Deceased.

B. Defendants

7. Defendant, ABBOTT LABORATORIES, d/b/a ABBOTT DIABETES CARE is an Illinois corporation with its principal place of business located at 100 Abbott Park Road, Abbot Park, Illinois 60064.

8. Defendant, INSULET CORPORATION is a Delaware corporation with its principal place of business located at 600 Technology Park Drive, Billerica, Massachusetts 01821.

9. Defendant, RGH ENTERPRISES INC., d/b/a EDGEPARK MEDICAL SUPPLIES, INC. is an Ohio corporation with is principal place of business located at 1810 Summit Commerce Park, Twinsburg, Ohio, 44087.

IV. STATEMENT OF FACTS

10. Defendants are corporations engaged in interstate commerce throughout the United

States of America. They develop, market, distribute and sell healthcare goods and products throughout the United States and are actively engaged in interstate commerce. The goods and products they produce and sell include products used by those who suffer from diabetes. Specifically, they develop, market, deliver and sell products used by individuals to monitor and test their blood glucose levels.

11. Defendant, INSULET CORPORATION, developed, marketed, distributed and sold a product they call the OmniPod Insulin Management System.

12. Defendant, ABBOTT LABORATORIES, developed, marketed, distributed and sold a product they called FreeStyle Blood Glucose Test Strips.

13. Defendant, RGH ENTERPRISES, INC., marketed, distributed and sold FreeStyle Blood Glucose Test Strips and the OmniPod Insulin Management System. RGH ENTERPRISES, INC. placed these products in the stream of commerce.

14. The Defendants collaborated so that FreeStyle Blood Glucose Test Strips were the only strip type that is approved for use with the OmniPod Insulin Management System.

15. The Defendants sold their products throughout the United States to consumers representing that these consumers could monitor their own blood glucose levels at home.

16. In December of 2011, JOEL URBAN BUCCY, a diabetic, began using the products manufactured and distributed by Defendants. Specifically, he began using the FreeStyle Blood Glucose Test Strips with the OmniPod Insulin Management System. Like all consumers of these products, he assumed that by using these products, he could accurately monitor and measure his blood glucose level at home.

17. Unknown to JOEL URBAN BUCCY, the products had a tendency to produce erroneous blood glucose results. Defendants knew or should have known of this defect, yet

Defendants continued to market, distribute and sell these products.

18. The defective condition of the products, the tendency to produce erroneous blood glucose results, existed at the time that the products left the manufacturers' control. This condition was unreasonably dangerous.

19. The products failed to perform as safely as an ordinary consumer would expect when used to measure blood glucose levels.

20. Defendants knew or should have known that the products had a tendency to produce erroneous blood glucose results, and the Defendants failed to inform and warn the plaintiff and the general public of the defective products.

21. On March 15, 2012, JOEL URBAN BUCCY was operating a motor vehicle in the City of Irving, County of Dallas, in the State of Texas. While JOEL URBAN BUCCY was operating his motor vehicle, he suffered a diabetic event. As a result, JOEL URBAN BUCCY lost control of his vehicle, struck another vehicle, and was killed.

22. On the day of the accident and prior to the accident, JOEL URBAN BUCCY had used Defendants' products. Defendants' products gave JOEL URBAN BUCCY an erroneous test result.

23. A proximate cause of JOEL URBAN BUCCY's death was the false reading of his blood glucose level caused by his use of Defendants' products on the day of his accident.

24. The FreeStyle Blood Glucose Test Strips that JOEL URBAN BUCCY used to test his blood glucose on the day of the accident were those subject to a recall by Defendant ABBOTT LABORATORIES. Plaintiffs received notice of the defective products in a letters dated February 14, 2014 and February 26, 2014. These letters were the first notice Plaintiffs had of the defective products causing the death of JOEL URBAN BUCCY.

25. Defendants have a duty to the general public and specifically to JOEL URBAN

BUCCY to exercise reasonable care in the design, study, development, manufacture, promotion, sale, labeling, marketing and distribution of FreeStyle Blood Glucose Text Strips and OmniPod Insulin Management System products.

26. Defendants violated this duty by failing to exercise reasonable care in the developing, testing, designing, marketing, sale and manufacturing of their products. ABBOTT LABORATORIES failed to design and/or manufacture a product that could be used to accurately measure blood glucose levels. INSULET CORPORATION failed to design and/or manufacture a product that could be used safely in conjunction with FreeStyle Blood Glucose Test Strips to accurately report blood glucose levels. The breach of this duty proximately caused JOEL URBAN BUCCY's death.

27. Defendants had a duty to warn the general public and specifically JOEL URBAN BUCCY of the risks of false low blood glucose readings and breached this duty by failing to adequately warn him of the risks of erroneous blood glucose readings. The breach of this duty proximately caused JOEL URBAN BUCCY's death.

28. Defendants violated a statutory duty of care owed in the design, manufacture and marketing of their products.

29. Defendants expressly warranted that their products accurately and safely reported blood glucose levels. Defendants overstated the accuracy and reliability of their products. Defendants disseminated to JOEL URBAN BUCCY and the general public inaccurate, misleading and false information about their products effectiveness.

30. JOEL URBAN BUCCY justifiably relied on Defendants' representations. Had JOEL URBAN BUCCY known of the risks of false low blood glucose readings, he would not have relied on the products accuracy and operated a motor vehicle.

31. Defendants sold their products to JOEL URBAN BUCCY. Defendants are merchants with respect to their products. Their products were not of merchantable quality because they failed to accurately report blood glucose levels. For this reason, their products were not fit for the ordinary purposes for which they are used.

32. JOEL URBAN BUCCY is survived by his wife, MELISSA ANN BUCCY and their two (2) children, SAWYER BUCCY and CAMERON JOEL BUCCY. As a proximate result of Defendants' actions, Plaintiffs suffered and seek to recover all damages allowed under applicable law.

33. To the extent necessary, Plaintiffs affirmatively plead the Discovery Rule and/or the Tolling Rule to any defense of limitations asserted by Defendants regarding any of Plaintiffs' causes of action. This is because Defendants engaged in a course of action to conceal the defective nature of their products from the public.

V. CAUSES OF ACTION

A. Wrongful Death

34. This suit is brought under the Wrongful Death Act of the State of Illinois provided in sections 740 ILCS 180/1 and 180/2.

35. MELISSA ANN BUCCY, in her individual capacity, is entitled to recover all damages allowed by law, including loss of the care, maintenance, support, services, advice, counsel and reasonable contributions of a pecuniary value. In addition, she is entitled to recover for loss of companionship and society and for her mental anguish as the result of the wrongful death of her husband. Her damages continue to accrue.

36. SAWYER BUCCY and CAMERON JOEL BUCCY, are entitled to recover for their pecuniary loss, the loss of companionship and society, and the mental anguish sustained by each of

them resulting from the wrongful death of their father. Their damages continue to accrue.

B. Survival Claim

37. Plaintiffs are the surviving heirs of JOEL URBAN BUCCY. They are entitled to recover for the conscious pain and suffering of JOEL URBAN BUCCY before he died. JOEL URBAN BUCCY died intestate, no administration is pending and none is necessary.

C. Products Liability– Failure to Warn

38. The actions of Defendants, as set forth above, constitute strict liability based on their failure to warn the general public and JOEL URBAN BUCCY of their defective products which proximately caused the death of JOEL URBAN BUCCY.

D. Products Liability- Manufacturing Defect

39. The actions of Defendants, as set forth above, constitute strict liability based on the manufacturing defect of their products which proximately caused the death of JOEL URBAN BUCCY.

E. Negligence

40. The actions of Defendants, as set forth above, constitute negligence proximately causing the death of JOEL URBAN BUCCY.

F. Negligent Misrepresentation and/or Fraud

41. The actions of Defendants, as set forth above, constitute negligent misrepresentation and/or fraud which proximately caused the death of JOEL URBAN BUCCY.

G. Breach of Express Warranty

42. The actions of Defendants, as set forth above, constitute breach of express warranty which proximately caused the death of JOEL URBAN BUCCY.

H. Breach of Implied Warranty of Merchantability

43. The actions of Defendants, as set forth above, constitute breach of implied warranty of merchantability which proximately caused the death of JOEL URBAN BUCCY.

I. Negligence Per Se

44. The actions of Defendants, as set forth above, constitute negligence per se which proximately caused the death of JOEL URBAN BUCCY.

J. Fraudulent Concealment

45. The actions of Defendants, as set forth above, constitute fraudulent concealment strict proximately causing the death of JOEL URBAN BUCCY.

K. Illinois Consumer Fraud and Deceptive Practices Act

46. The actions of Defendants, as set forth above, constitute violations of the Illinois Consumer Fraud and Deceptive Practices Act which proximately caused the death of JOEL URBAN BUCCY.

L. Jury Demand

47. Plaintiffs are entitled to and request a trial by jury.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that the Defendants be cited to appear and answer and that upon final trial the Plaintiffs be awarded:

(a) Actual damages as may be awarded by the trier of fact;

(b) Exemplary damages as may be awarded by the trier of fact;

(c) Prejudgment and post-judgment interest as allowed by law;

(d) Costs of suit; and

(e) Such other and further relief, at law or in equity, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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****Motions to be admitted Pro Hac Vice will be filed***