

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF KANSAS**

**ERICA FISHER, Individually  
and As Personal Representative  
of the Estate of  
Karen A. Fisher, Deceased,**

**Plaintiff,**

**Case No. 04-2034 JWL**

**v.**

**ZX PRODUCTS, INC.,  
ZX PRODUCTS HOLDINGS, INC.,  
ZX TOPICAL PRODUCTS, INC.,  
VITAFREE.COM, INC.,  
and  
TRIMLIFE, INC.,**

**Defendants.**

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**ORDER**

This matter come before the court on plaintiff's motion for damages based on a default judgment entered by this court on December 2, 2004, against defendants ZX Products, Inc., ZX Products Holdings, Inc., ZX Topical Products, Inc., and Vitafree.com, Inc. Plaintiff alleged in her First Amended Complaint that these defendants manufactured an ephedra-based dietary supplement called "Diet ZX" that was ingested by the decedent, Karen A. Fisher, and they alleged that the drug directly caused her death. Plaintiff Erica Fisher, individually and as personal representative of the estate of Karen A. Fisher, seeks damages for wrongful death and for a survival action; she also seeks punitive damages. To explore these matters, the court held a damages hearing on June 26, 2006. Having conducted that hearing, the Court has determined

that plaintiff is entitled to damages in the amounts listed below:

On plaintiff's survival cause of action, the Court awards One Hundred Thousand Dollars (\$100,000.00) as damages accrued by the decedent between the time of her injury and the time of her death.

On plaintiff's wrongful death cause of action, the Court awards as follows:

1. Non-economic loss. This Court awards Two Hundred Fifty Thousand Dollars (\$250,000.00) for the mental anguish, suffering, or bereavement, and loss of society, comfort or companionship that has been and will be sustained by the heirs of Karen A. Fisher as the result of her death.
2. Economic Loss.
  - (a) This Court awards One Hundred Thousand Dollars (\$100,000.00) for the loss of services, attention, advice, and protection as a result of the death of Karen A. Fisher.
  - (b) This Court awards Twenty Five Thousand Dollars (\$25,000.00) for the loss of earnings that the decedent, Karen A. Fisher, would have provided and plaintiff could reasonably have expected to receive from the continued life of Karen Fisher.
  - (c) This Court awards Three Thousand Eight Hundred and Three Dollars and 94/100 (\$3,803.94) for funeral bills in connection with Karen A. Fisher's death, and Four Hundred and Sixty Eight Dollars and 26/100 (\$468.26) for incidental bills related to the decedent's funeral and other

arrangements after her death.

Due to the aggravating circumstances attending the death of Karen A. Fisher and the wanton conduct of the defaulting defendants as set forth in plaintiff's First Amended Complaint and at the damages hearing, the Court awards Seven Hundred and Fifty Thousand Dollars (\$750,000.00) in punitive damages.

Furthermore, at the damages hearing on June 26, 2006, the decedent's parents, Erica Blakemore-Fisher and Leroy Fisher, testified that they would prefer the judgment proceeds to be apportioned equally among them and decedent's siblings.

**IT IS THEREFORE ORDERED** that plaintiff shall recover from defendants ZX Products, Inc., ZX Products Holdings, Inc., ZX Topical Products, Inc., and Vitafree.com, Inc. the sum of One Million Two Hundred Twenty Nine Thousand Two Hundred and Seventy Two Dollars and 20/100 (\$1,229,272.20), together with interest thereon at the legal rate from and after the date this judgment is entered, together with the costs of this action.

**IT IS FURTHER ORDERED THAT** the judgment proceeds be apportioned as follows:

Erica Marlene Blackmore-Fisher f/k/a Erica Marlene Fisher - \$245,854.44

Leroy Ransler Fisher - \$245,854.44

John Charles Fisher - \$245,854.44

Melissa Lynne Hagen - \$245,854.44

Leslie Jeanne Gray - \$245,854.44

**IT IS SO ORDERED** this 30<sup>th</sup> day of June, 2006.

s/ John W. Lungstrum

John W. Lungstrum

United States District Judge