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Class Lawyers Win \$50M Over Hair-Loss Fix

The Recorder
By **Kate Moser**
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SAN FRANCISCO — An Alameda County jury late last month returned a \$50 million verdict (.pdf) in a class action that sought relief for Californians who'd bought Avacor, a hair-loss remedy that was marketed as an all-natural, clinically tested product.

Attorneys fees have yet to be decided, said L. Timothy Fisher, of Walnut Creek firm Bramson, Plutzik, Mahler & Birkhaeuser. New York lawyer Scott Bursor and New York firm Faruqi & Faruqi also represented the plaintiffs. There were about 150,000 purchases of Avacor in California during the class period, but since some were reorders, the exact size of the class is unclear, Fisher said.

The outcome against two defendants marked the second trial victory in the same class action for the plaintiff lawyers. The earlier trial had ended in a \$40 million win against different defendants, but Fisher said the awards from the trials will not be added together, and he expects the court will order that \$50 million in all be returned to the class.

Both trials took place before Alameda County Superior Court Judge Robert Freedman.

The defendants in the latest trial were two officers of Global Vision Products Inc., Robert DeBenedictis and Henry Edelson — a court stay after the company's 2007 bankruptcy filing had kept them out of the earlier one. DeBenedictis was represented by Peter Hart and Michael Collins of LeClairRyan's San Francisco and New York offices, respectively. Edelson was recently representing himself and did not appear at trial.

One of DeBenedictis' lawyers said his client was just an investor and not directly participating in the company in its early years, and that he planned to appeal.

"Once he became involved in 2004, he took every effort he possibly could to get the company back on the straight and narrow and get its advertising in compliance with the Better Business Bureau and the Food and Drug Administration," Hart said. "We think the jury looked at his position and made the leap that just because he was president, he was responsible." To bolster that thought, he noted that the jury had found in DeBenedictis' favor on allegations of conspiracy with defendants from the earlier trial.

Name plaintiffs Garrett Boyd and James Thomas claimed Avacor's three-part "hair re-growth program" was misleading in selling itself as an all-natural, clinically tested product with no side effects. Fisher, one of their lawyers, contended that Global Vision Products' advertising referred to a clinic that didn't exist, a study that was never done and success rates that had no backing. The company, having filed for bankruptcy, was not included in either trial in *Thomas v. Global Vision Products*, RG-03091195.

Testimony that DeBenedictis continues to sell Avacor seemed influential with the jury, Fisher said.

"We got the sense that they understood how many people had been defrauded here and that this was a widespread scheme, that this was something that [they] needed to put a stop to."

But Hart said that while DeBenedictis has an interest in a new company, Avacor, no state or federal agency is claiming that selling the hair remedy is improper.

The 2007 trial involved three principal defendants: Avacor's creator, a Nascar driver hired as its celebrity spokesman and a former doctor who appeared in ads for the product. The jury returned a verdict of just under \$37 million. In his May 2008 statement of decision, Freedman increased the award to \$40 million.

"The court can and does take judicial notice of the fact that enormous sums of money are spent on personal care and grooming products," Freedman wrote in that decision (.pdf). "Into this lucrative market stepped a band of hucksters, defendants, to prey on the vulnerabilities of human nature and employing a colossal array of false, deceptive and fraudulent techniques cynically collected millions of dollars from deceived California consumers."



Alameda County Superior Court Judge Robert Freedman
IMAGE: Jason Doiy/The Recorder

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