

AMO Wipes Out Contact Lens Solution Class Action

By **Abigail Rubenstein**

Law360, New York (January 05, 2010) -- A federal judge has granted Advanced Medical Optics Inc. summary judgment in a putative consumer class action over contact lens solution that was pulled from the market after being linked to infection, ruling that the plaintiffs, who had not developed the infection, lacked standing.

Judge Phyllis J. Hamilton of the U.S. District Court for the Northern District of California on Monday ruled that the plaintiffs could not show injury because they did not contract eye infections because of AMO's product.

The plaintiffs filed suit in June 2007, three weeks after AMO voluntarily recalled its Complete MoisturePlus Solution-brand contact lens solution when the product was linked by the U.S. Centers for Disease Control and Prevention to an outbreak of acanthamoeba keratitis, a rare corneal disease caused by an amoebic microorganism present in some water sources.

The CDC found evidence that Complete was less effective than other solutions at disinfecting contact lenses against the amoeba.

According to Judge Hamilton's order, AMO implemented a voluntary reimbursement program to compensate Complete users for any unused product they had at the time of the recall and for any contact lenses that needed to be discarded because they had been in contact with the solution, and the company said the program was still available.

The plaintiffs sued on behalf of all individuals who had purchased Complete from June 2003 through the 2007 recall, alleging that AMO had made false statements about the contact lens solution and had concealed known risks of using it in violation of California's unfair competition and false advertising laws.

Neither of the two named plaintiffs, Alexis Degelmann and Joseph Lin, became infected with acanthamoeba keratitis, and both had stopped using the product before the recall, the ruling said.

The plaintiffs did not claim to have suffered physical harm from using Complete, but instead took issue with the assertion on the Complete label that the product "rinses, cleans, stores, disinfects," maintaining that it did not disinfect, court papers show.

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AMO argued that the plaintiffs lacked standing to bring their claims under the unfair competition and false advertising laws because they were not impacted by legally cognizable harm.

Judge Hamilton agreed that the plaintiffs could not show injury in fact because they did not sustain acanthamoeba keratitis and that, because they stopped using the solution long before the recall, they could not contend that the recall caused them to discard unused solution.

Finally, she concluded that the plaintiffs could not claim to have lost the money they spent purchasing Complete, as they would have bought another contact lens solution instead.

“We respectfully disagree with Judge Hamilton's view, and we believe it is contrary to other rulings in the Ninth Circuit on what constitutes injury,” Moscone Emblidge & Quadra LLP's James Quadra, who represents the plaintiffs, told Law360.

Quadra said that the ruling was “particularly surprising” because a class of California consumers bringing identical claims under the same state laws had already been certified by a state court.

The plaintiffs intend to appeal, and expect to see the ruling reversed, Quadra said.

An attorney for AMO was unavailable for comment Tuesday.

The plaintiffs were represented by Moscone Emblidge & Quadra LLP, [Lief Cabraser Heimann & Bernstein LLP](#), Moore Labriola LLP and The Schmidt Firm.

AMO was represented by [Venable LLP](#) and [Morris Polich & Purdy LLP](#).

The case is Degelmann et al. v. Advanced Medical Optics Inc., case number 07-0317, in the U.S. District Court for the Northern District of California.