

## Accused of fraud

# Utah firm seeking life after fraud case

## After being acquitted, owner plans to restore Wasatch Pharmaceutical

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SPRINGVILLE - It took Gary Heesch almost two decades to obtain a patent on his treatment for skin diseases and set up Wasatch Pharmaceutical Inc. to sell the product.

Then his Midvale business was devastated when the Securities and Exchange Commission accused Heesch of committing fraud and securities violations, halting operations instantly. "We were ready literally to turn on the lights the next day and begin marketing," Heesch said. "They destroyed 20 years of work."

Heesch said he provided documents to rebut the allegations but the SEC filed a civil complaint in 2003. The case turned into a criminal matter two years later, when he and eight others were indicted in Chicago on fraud charges.

Heesch, now 72, took his case all the way to trial. It was a risky move: About 90 percent of federal defendants are convicted, either by pleading guilty or being found guilty by a jury.

"He's got a lot of courage," said his court-appointed Chicago defense attorney, Leonard C. Goodman. "He said, 'I can't stand up there and say I committed a fraud when I didn't.' That's all I needed to hear. I said we'll fight."

And they won. In August, Heesch was acquitted of all charges. But, the lengthy prosecution had cost him everything he had worked for.

### Treatment developed

Heesch, an alumnus of Brigham Young University and Portland State University, has served as chief epidemiologist for Santa Clara County, Calif. He began working in the 1980s to develop medical treatments for eczema, psoriasis and other skin disorders using water-soluble antibiotics.

Heesch moved to Salt Lake City and set up Wasatch Pharmaceutical in Midvale. He finally received a patent on his medications in April 2003.

In the meantime, Wasatch Pharmaceutical ran into financial trouble. Heesch decided to take the company public - in retrospect, a mistake, he says - and entered into a financing arrangement with a Chicago money lender, Frank Custable.

The deal involved the issuance of large amounts of unregistered stock, which is allowed only under certain circumstances.

Heesch said he believed Custable was legally issuing the stock to consultants for their work setting up a marketing plan. Instead Custable fraudulently gained interest in the stock and funneled money to himself, according to Goodman.

The arrangement caught the attention of federal authorities, leading to the indictment. Heesch was charged with five counts of wire fraud and one count of SEC fraud.

As he awaited his trial, Heesch said, several million dollars worth of his creams and medications stored in a Murray warehouse became too old to sell.

### Dream team

Heesch's legal team was headed by Goodman, a sole practitioner who was backed up by paralegal Thom Cordell. Melissa Matuzak joined as another paralegal, and a Goodman friend, lawyer Mark G. Weinberg, signed on to work for free.

Cordell said the prosecutor had not lost a case in years.

Matuzak, who plowed through thousands of pages of evidence, said the injustice in the case was "multi-level."

"Not only was Gary wrongfully indicted by the federal government, but he lost his company, which was clearly his passion, to a con man," she said.

As they prepared for trial, Heesch reassured his wife he would be cleared. However, Ann Heesch still worried, suffered through nights filled with bad dreams.

One dream in particular, of a turtle eating an alligator, stuck in her head.

In the weeks before trial began in U.S. District Court in Chicago, the other defendants pleaded guilty and agreed to testify against Heesch. The Utah businessman was facing years in prison if convicted, but he refused all plea deals.

Heesch said his confidence grew as Goodman "tore apart" government witnesses on cross-examination. When the prosecution finished its case, the defense rested without calling witnesses, believing the government had

failed to prove the charges.

**Back on track**

Jurors deliberated about eight hours. Heesch said the only time he was nervous was when the six men and six women walked into the courtroom with their decision.

Then, Judge Blanche Manning read the verdicts: Not guilty on all six counts.

Jury foreman Meg Georgevich said jurors created a timeline of the case and taped it to the wall. Then, they matched correspondence between Heesch and Custable to the dates of the alleged fraud.

"The letters laid it out for us," Georgevich said. "We didn't feel like the prosecutor proved beyond a reasonable doubt that he intended to defraud."

Randall Samborn, spokesman for the U.S. Attorney's Office in Chicago, said the government respects the jury's verdict.

"But it is important to note that eight co-defendants pleaded guilty, demonstrating the success of this prosecution on the merits," he said.

Heesch, who now lives in Springville, has a patent pending on a fastener. If he strikes a deal with a manufacturer to produce the tool, he plans to resurrect his skin treatment company.

"The saddest thing is people have been deprived of these therapies all these years," he said.

But Heesch is looking ahead and putting his legal troubles behind him.

"The turtle ate the alligator," he said. "It's over."

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