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# Franklin Street, Fairview stand to gain as judge orders Par Pharmaceutical to pay Pentech \$70M

Triangle Business Journal - by [Chris Baysden](#)

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CHAPEL HILL – A federal judge's decision awarding \$70 million to Illinois-based Pentech Pharmaceuticals Inc. could shower millions of dollars on investors associated with local investment firms Franklin Street Partners and Fairview Management Group.

"It was good news for us," says

Bob Eubanks, the founder and president of Chapel Hill-based Franklin Street Partners. "There are a lot of people in North Carolina invested in it."

The breach of contract case pitted drug development firm Pentech – which counts Franklin Street and Fairview among its investors – against generic drug maker Par Pharmaceutical Inc. Publicly traded Par is based in Woodcliff Lake, N.J., while Pentech's operations are in a Chicago suburb.



Steve Wilson

Jim Lumsden chairs Pentech.

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Though none of Pentech's 20 employees are in the Triangle, Chairman Jim Lumsden does live here. Lumsden, who also is the managing partner of Raleigh-based Fairview Management Group, says the verdict will allow Pentech to redeem its preferred stock.

He estimates that the ruling will mean a return of \$16.5 million for investors associated with Franklin Street and Fairview. Those investors, including dozens in North Carolina, bought \$6.9 million worth of Pentech's preferred stock over the years.

Notable local investors include Tom Darden, CEO of Cherokee Investment Partners, and the state of North Carolina's retirement system, which invested more than \$2 million in Pentech. Lumsden says the retirement system's return on its preferred stock investment would be \$3.6 million.

The local investors' stake in Pentech traces back to a joint venture fund called Franklin Street-Fairview I, which was established in 1997. That fund totaled \$25 million, according to Lumsden, who says that some investors also made investments directly into the companies in which the fund had invested.

The fund invested \$6.9 million in Pentech in 1998, then put another \$2.2 million into the company in 2001. Investors received both preferred and common stock in the company.

Pentech's lawsuit against Par stemmed from a settlement over a generic version of the GlaxoSmithKline antidepressant Paxil. Back in the late 1990s and during the early part of this decade, Pentech worked to develop a generic version of the drug. Par and Pentech eventually reached an agreement that would allow Par to market the generic if it received regulatory approval.

Pentech's work on the generic prompted GSK to file patent infringement litigation against Pentech. The litigation was resolved in 2003 when Par, Pentech and GSK struck a settlement agreement that eventually allowed Par to market unbranded Paxil tablets provided and licensed by GSK.

But Pentech and Par soon became embroiled in a disagreement over how much money Pentech was entitled to receive from Par's sales of the drug. That ultimately prompted Pentech to sue Par in 2004.

The resulting legal battle in the U.S. District Court for the Northern District of Illinois took years to resolve. U.S. Magistrate Judge Morton Denlow on Feb. 9 awarded Pentech \$49.5 million in damages and \$20.5 million in interest.

"Pentech is pleased by the ruling," says Raleigh lawyer Jerry Hartzell, who helped to represent the company.

Pentech President and CEO Albert Hummel says that while the company has products in its pipeline, it doesn't have any on the market. Hummel says of the firm's investors, "They have been patient with us."

Lumsden cautions that investors may have to wait even longer before seeing a return.

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“Winning the lawsuit is one thing,” says Lumsden. “Collecting is another.”

He has good reason not to celebrate too soon. Asked about a possible appeal, Par spokeswoman Allison Wey says, “We are weighing our options at this point.”

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