

To Fight Consumer Hair Loss Claims, Focus On Causation

By **Connor Sears** (March 14, 2023)

Many product liability lawsuits involve the claim that a product causes hair loss or alopecia. Recent litigation claiming a product causes hair loss includes shampoos, conditioners, wood dust from bed frames, medications and chemotherapy drugs.

Because there are many types of hair loss with a variety of causes, establishing both general and specific causation in litigation asserting hair loss claims can be extremely challenging.



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A recent specific example of hair loss litigation involves the hair care brand Olaplex. More than 30 users of the product sued the company this February in the U.S. District Court for the Central District of California in *Albahae et al. v. Olaplex Holdings Inc.* The complaint includes claims for negligence and false marketing and asserts that Olaplex products can cause hair loss, as well as dry and brittle hair.

More specifically, the lawsuit asserts that various chemicals included in Olaplex's product are known allergens and irritants that can cause dermatitis and hair loss.

Establishing causation in these types of litigation can be very difficult because such cases involve complex causation and medical issues. In particular, there are many types and causes of hair loss. Additionally, individuals with hair loss may have underlying health conditions that may make establishing both general and specific causation difficult or impossible.

As a threshold matter, a plaintiff will need to define the type of hair loss that a product allegedly causes. More specifically, a plaintiff will need to establish how the hair loss presents clinically — if the hair loss is in a pattern, in patches or diffuse — and if the hair loss is scarring or nonscarring.

Hair loss is broadly divided into two categories: scarring and nonscarring hair loss. For scarring hair loss, the hair follicle's ostia is no longer open and is scarred shut. In theory, nonscarring hair loss can be reversed, whereas scarring hair loss is permanent.

Even if a plaintiff is able to show that a product is capable of causing a certain type of hair loss, establishing that a specific plaintiff has hair loss caused by that product, as opposed to another type of hair loss, can be very challenging.

There are many different types and presentations of hair loss that occur quite frequently in the general population that may look identical to the hair loss claimed in litigation. For instance, there are estimates that 50% of women will experience hair loss by the time they are 50 years old.

For plaintiffs who assert that a product caused nonscarring hair loss, there are many types and presentations of naturally occurring nonscarring hair loss. The most common type of hair loss seen in both men and women is androgenetic alopecia. Androgenetic alopecia is a type of nonscarring hair loss that is genetic and driven by hormones.

There are many other types of nonscarring hair loss that occur naturally in the general

population that appear in many clinical patterns. For example, telogen effluvium is a common form of nonscarring hair loss that typically presents in a diffuse pattern over the entire scalp. Alopecia areata is another form of nonscarring hair loss that generally presents as patchy hair loss.

For plaintiffs who assert that a product caused scarring hair loss, there are many types and presentations of scarring hair loss.

For example, central centrifugal cicatricial alopecia is a common form of scarring hair loss that begins on the top of the head and spreads outward in a circular fashion. Another type of common scarring hair loss is traction alopecia, which can occur on any part of the scalp where hair care practices result in constant pulling of the hair. And yet another type of scarring hair loss is frontal fibrosing alopecia, which presents as hair loss on the front part of the scalp that can move backward.

Plaintiffs may assert that the temporal relationship between their exposure to a product and their hair loss establishes causation. Yet, many natural types of hair loss can have a rapid onset. Further, many underlying health conditions, nutritional deficiencies, hormonal changes or medications can also bring about rapid hair loss. All of those factors would need to be considered and ruled out before causation can be established.

Finally, pathology can be useful in establishing lack of specific causation. Many forms of hair loss have established pathological findings. Dermatologists often take punch biopsies, which are most often a 4 millimeter section of skin — about the size of a pencil eraser — removed from the scalp, to evaluate hair loss. The biopsy is then sent to a dermatopathologist to section and examine under a microscope.

In evaluating a plaintiff's type and cause of hair loss, the pathology may show that the plaintiff has a common form of alopecia, not alopecia caused by a product.

When defending against these cases, practitioners should use the discovery process to develop facts about a specific plaintiff's hair loss.

As an initial step, collecting medical records is important. There are many medical disciplines and health conditions that can be related to hair loss. As such, records should be collected not just from dermatologists but also from internists, endocrinologists and rheumatologists.

Further, because many medications are associated with various forms of hair loss, discovery should include the medications the plaintiff currently takes and has taken in the past.

Additionally, discovery should include requests for photographs of the plaintiff as well as family members. Photographic evidence is useful for many reasons. First, the photographs will help to establish how long the plaintiff has had hair loss. There is the potential that they may have had hair loss well before using the product.

Second, the photographs can show if there has been progression of the hair loss and over what period of time. Many forms of hair loss are progressive and may not be related to the product in question.

Third, the photographs will show the clinical presentation of the hair loss. That can be useful in evaluating what type of hair loss a plaintiff may have, which may affect strategy and additional discovery.

Fourth, having photographs of family members can use useful to determine if there is a family history of hair loss. Many forms of hair loss are genetic, so determining if there is a family history of hair loss can be helpful in evaluating if the plaintiff's hair loss is actually related to the product in question.

The plaintiff's deposition is also a useful time to collect information about their hair loss. While the questions asked should be tailored to the type of hair loss a plaintiff may have, the questioner should ask generally about how long the plaintiff has had hair loss, risk factors for hair loss, family history of hair loss, if the plaintiff has sought treatment, any diagnosis made and any treatments tried.

Finally, practitioners will need to consider whether to request a medical examination of the plaintiff by a dermatologist and whether a punch biopsy should be taken. That determination may depend on the case facts.

There are times when having photographic evidence and the plaintiff's testimony may be sufficient for a dermatological expert to make an informed diagnosis. But there are other times when a hands-on evaluation may be useful.

Ultimately, because there are many commonly occurring forms of hair loss, as well as many causes of hair loss, establishing both general and specific causation in litigation asserting claims of hair loss can be quite difficult.

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