

## United States Senate Special Committee on Aging

### Hearing on Swindlers, Hucksters and Snake Oil Salesmen: The Hype and Hope of Marketing Anti-Aging Products to Seniors September 10, 2001

#### Testimony of E. Vernon F. Glenn, Esq.

I appreciate the committee's invitation to speak. I hope my remarks will be helpful. I can only specifically discuss GV Data Systems, GeroVita International, Glenn Braswell and some of their offspring because they are the parties I have sued. However, in my investigations and work-ups, I gathered considerable information about this entire burgeoning industry and its products.

Sales of dietary and nutritional supplements have grown into a multi-billion dollar industry. With overstated, inaccurate and misleading claims directed at an aging and fearful population, manufacturers and distributors of these supplements generate substantial sales. As our population ages, this market will become even more lucrative.

Under present day requirements, dietary and nutritional supplements are not regulated. Subsequently, they are not inspected or quality controlled by the FDA. These products, which contain vitamins, minerals, herbs and other ingredients, have purported health benefits for allergies, prostate cancer, arthritis, digestive disorders, bone and joint health, obesity, immune system failure, anti-aging, sexual disorder and diminished memory, among many others. These ingredients come from all over the world. Many claims made about the benefits of these supplements are anecdotal, unsubstantiated, gross exaggerations and downright bogus.

One of the largest direct marketers of health products, if not the largest is Gero Vita, International. In 1998, as a result of direct mailing of 20 million elaborate mailers EVERY month (totaling 240 million mailers that year), Gero Vita grossed about \$170 million in sales. An ad for a sales director last year boasted that the company had grossed \$250 million. Obviously, this is an enormous market!

While it is agreed that an adequate supply of vitamins and minerals are essential to good health, curative and preventative properties of these multitudinous substances have yet to be proven. With only some exceptions, the great majority of people will receive proper and adequate amounts in a balanced daily diet. Nevertheless, this industry in general and Gero Vita in particular, rapaciously markets its potions and elixirs.

My involvement with Gero Vita came about when a client, an old family friend and professional athlete, came to me after he was alerted by a golfing partner that his likeness adorned a sales brochure for a prostate cancer product which boldly claimed both preventative and curative results. Our lengthy investigation and lawsuit followed. In the process, I came to know much about Gero Vita International, Gero Vita Laboratories, G.B. Data Systems, Life Force Laboratories, S & G Laboratories, Health Quest Publications and their chief executive and owner A. Glenn Braswell. Eventually I came to represent three other high-profile sports celebrities who also were featured on these same brochures.

My clients, who all have substantial endorsement contracts and arrangements with various legitimate products and have likewise worked hard to be legitimate spokesmen for valid products, accused Glenn Braswell, G.B. Data Systems, et al, saying he had defamed their character through the unauthorized use of their likenesses in direct mail advertising. In peddling their herbal remedy Prostata, Braswell and G.B. Data Systems inappropriately and inaccurately reported on my clients' health and medical conditions. In 1997, Braswell and G.B. Data Systems mailed two different fliers featuring my clients' photographs and implying a bogus endorsement to over 17 million addresses. Subsequent sales of Prostata associated with those two brochures alone were over \$5 million.

Earlier, In 1995, the FDA sought to limit Gero Vita's claims by banning the importation of the company's products that

claimed they could prevent or treat disease. In 1997, the ban was extended to cover Life Force Laboratories, another company related to Gero Vita. Prostata itself is the object of FDA Import Alert #66-41 wherein officials are directed to automatically seize any Prostata imported into the country. (Ironically the FDA has no authority over Prostata manufactured or otherwise assembled in the United States.) Aside from the unauthorized endorsements, my clients were offended and angered to be linked to an inferior, medically-spurious product and a deceptive marketing scheme that was under the scrutiny of government investigation and penalty.

Braswell's business life has been marred by numerous questionable practices. During the process of discovery, I quickly became aware that Braswell and his companies were no strangers to litigation. In 1983 Braswell and companies settled FTC charges that they did not have adequate scientific evidence that the hair loss products worked and had not issued refunds upon request to customers as guaranteed. They were ordered to pay \$610,000 in penalties and further barred from making performance or efficacy claims for any product or service without reliable scientific evidence to substantiate them.

In the mid 1980s, the U.S. Postal service in Atlanta had 138 false representation complaints which were filed against 50 different medical/cosmetic business entities owned by Braswell. The cases concluded with 32 false representation orders and 15 consent agreements.

Also, Mr. Braswell pleaded guilty to mail fraud involving faking of "before and after" results of bust developers, hair growth, and cosmetic products. He was sentenced to five years' probation. He was also sentenced to a three-year prison term for Federal income tax evasion and perjury charges stemming from the Postal Services' mail fraud investigation. During his incarceration, the sentencing judge ordered Braswell to undergo counseling and treatment for alcohol and drug problems.

Also in 1984 while he served his federal prison term, Braswell entered a no-contest pleas to grand theft charges related to a burglary arrest at the home of a former employee. He was sentenced to two years' probation to run concurrently with his federal sentence.

Braswell and companies are currently under investigation by the U.S. Attorneys Office in Los Angeles for criminal tax fraud and money laundering charges involving tax avoidance in the tens of million dollars. Their accounting practices are under fire for costing of products sold and subsequent reductions of profits made on various corporate tax returns. The investigation is focusing on allegations that Braswell, Gero Vita and G.B. Data Systems used an off-shore company, Deleon Global Trading, to falsely mark-up reported costs of products that Gero Vita purchased from vendors. This enabled Gero Vita to evade corporate income taxes and to provide Gero Vita with purported justification for transferring millions of dollars to off-shore accounts in an effort to conceal funds from the IRS.

President Clinton's last-minute pardon of Braswell has clouded these current investigations and probes. Remarkably, the larger story was assembled and published by *National Enquirer* reporters who were able to piece together the connection of Braswell to attorney Hugh Rodham who was responsible for getting the pardon request to Clinton. (The status of the federal investigation in Los Angeles is unknown to me and I presumed not yet resolved. In candor, I have never seen a copy of the pardon granted and do not know whether it covers the current investigation or Mr. Braswell's earlier felony convictions.)

Nevertheless, Mr. Braswell's business appears to remain profitable. Aside from the profusion of lawsuits and investigations surrounding Braswell and his business ventures, he recently went through a very public divorce in Miami. In a mediated, voluntary settlement agreement, he agreed to pay his wife \$42 million dollars over eight years.

In Prostata mailers, Gero Vita predicts veritable prostate Armageddon for those remiss in purchasing its products. Certainly no one should make light of the very real problems associated with prostate health, but Gero Vita cites a gloomy outlook for everyone who neglects to buy Prostata. Using scare tactics and appealing to vanity and virility, Prostata is implied to prevent and treat prostate enlargement, impotence, and incontinence. Intentionally ambiguous ad copy says Prostata offers nutritional support for prostrate health by "soothing and strengthening" the gland and "reversing prostrate growth". Murky marketing touts zinc, lycopene and hydrangea extracts that will inhibit growth and keep the prostate's size in check. According to the brochure, one of the most common benefits of Prostata is the revitalization of one's sex life. The slick and salacious ads ominously warn of possible side effects of mainstream

surgical and medical prostate treatments that will leave men impotent and with enlarged breasts.

After all the benefits of Prostata are extolled, promises are made and satisfaction warranted, a discreetly placed disclaimer is tucked away at the bottom of their web page "Gero Vita products are dietary supplements and as such are *not intended to treat, cure or prevent any disease*. Those seeking treatment for a specific disease should consult a physician or other qualified health care professional prior to taking Gero Vita products or any other dietary supplement. I submit this disclaimer is there solely as lawsuit/liability repellent. If a discerning consumer were to adhere to the admonishment, no sales of Prostata would ever occur.

In addition to investigating the litigation history of Mr. Braswell and his companies' marketing strategies for the preparation of my clients' lawsuits, I also sought expert medical opinions on the efficacy of Prostata. I had the Prostata, its ingredients and other information provided by Gero Vita supporting its health claims scrutinized by Walter Ettinger, M.D., Head of the Department of Gerontology at the Paul Sticht Center for Aging associated with the Wake Forest University School of Medicine. Dr. Ettinger is renowned and respected in the field of gerontology. Dr. Ettinger notes that the ingredients in "Prostata may have some biological effects on the prostate, but any claims that it may prevent the development of prostate cancer are without **any** scientific foundation." (Emphasis added.) He goes further in saying "the advertising material and articles are misleading. The material implies that the use of this product will lower the risk of prostate cancer, but the evidence cited speaks only to prostatitis (swollen prostate) and benign prostatic hypertrophy." When required during the discovery phase of the cases' development to substantiate the cancer fighting claims of Prostata, the defendants could do nothing more than provide a few medical journal articles that dealt with swelling of the prostate and not prostate cancer. *Swelling* and *cancer* are never to be mistaken as the same condition.

Gero Vita uses vanity, fear of death and aging along with inability to perform sexually to sell millions of dollars of Prostata and many other supplements each year. Glossy four-color brochures featuring celebrity "endorsers", testimonials, purported scientific study and evidence by "expert" persuade hopeful seniors to part with their hard-earned money for a daily dose of hope. Gero Vita creates consumer confusion by using physicians and scientists of dubious background to lend legitimacy to their supplements' assertions. Several members of their advisory boards are themselves subjects of investigations and professional restrictions.

Gero Vita has also been accused of taking medical research and misrepresenting results to appear to support the effectiveness of their products. Currently, in Albany NY, reputable arthritis specialist Joel Kremer, M.D., has sued Gero Vita and GB Data Systems for producing advertising in which Dr. Kremer's name was used without permission to create the appearance of endorsing the company's anti-arthritis supplement. Mary Prudden, M.D., of Columbia University alleges that Gero Vita has misrepresented the independent research of her late father-in-law Dr. John Prudden to support claims that the product Arthro-7 supposedly rebuilds joints and stops arthritis. Both suits are pending.

In summary, Prostata and other Gero Vita supplements are questionable products and compounds. They do not perform as they are advertised and there is no proof or medical evidence that they should. However, through misleading marketing to an unsuspecting consumer, sales of these concoctions generate tremendous sums of monies for Mr. Braswell. In light of the volume of charges, complaints, lawsuits, and the subsequent jail terms, sanctions, fines and settlements, one would assume Glenn Braswell would learn a lesson and understand the wrongs he has committed. Despite all, his companies thrive and multiply. The price he has had to pay to conduct business and bend and break laws, is insignificant compared to the immense profits he has made at the expense of gullible, trusting seniors.

*Caveat Emptor: Let the Buyer Beware!* Unfortunately until seniors are made aware of these scams, and there are two decades' worth to disclose, they will never be able to become more judicious consumers. The best advice is to see a doctor first. Eat a balanced diet. Exercise. Be skeptical!

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