

Zest Labs Wins \$222.7M in Walmart Retrial Over Trade Secrets

by **Mark Friedman** - June 9, 2025, 12:00am

The legal team for a California technology company sidestepped the pitfalls that come with retrying a case already heard by a jury, and the strategy paid off with a \$222.7 million verdict against Walmart.

That was more than twice the amount a different jury awarded in 2021.

A retrial usually favors the defendant “because they’ve done it once before,” said Patrick M. Ryan of Bartko Pavia LLP of San Francisco, the lead trial counsel for Zest Labs Inc. of San Jose, California.

Zest won the damages last month in federal court in Little Rock.

“They could figure out ways to defend against the evidence,” Ryan continued. “There are no surprises, right? Especially in a case like this, where the judge is largely limiting you to the original evidence, it’s hard to come up with something new that the defendant hasn’t seen before.”

Zest first sued the Bentonville retailer back in 2018 over allegations that Walmart stole Zest’s revolutionary technology and incorporated it into a patent that was later published, destroying Zest’s trade secret.

Zest received a \$110 million judgment after the trial in 2021, but U.S. District Judge James M. Moody Jr. of Little Rock ordered a new trial in December 2023, after new evidence was discovered that he said might have changed the outcome of the 2021 trial. That evidence was tied to the discovery phase of the first trial, when Walmart handed over to Zest’s lawyers thousands of pages of documents, including Walmart’s patent applications.

Walmart said in filings that if Zest believed the applications contained Zest's trade secrets, Zest had a duty to take reasonable steps to keep them confidential. That would include trying to stop the U.S. Patent & Trademark Office from making them public.

Walmart said if Zest had done that, there might have been no case. Instead, Walmart said, Zest did nothing to prevent the applications going public, then accused Walmart of using the patent information and disclosing it.

After Moody ordered a new trial, Zest hired Bartko Pavia.

Ryan said that Walmart's "new blame-the-victim defense became one of its greatest liabilities, which is one of the reasons that the punitive damage award was so big."

The jury awarded Zest \$72.7 million in compensatory damages and \$150 million in punitive damages, making it one of the largest jury verdicts ever awarded in federal court in Arkansas. The \$150 million punitive ruling will be reduced by \$4.6 million, however, because under the federal Defend Trade Secrets Act, the most Zest could receive is twice the amount of compensatory damages.

Still, Bartko Pavia said in a news release that the final judgment will also need to be adjusted to take into account interest and attorneys' fees.

A Walmart spokeswoman told *Arkansas Business* last month that the retailer "strongly disagrees" with the verdict and believes it's not supported by the facts.

"Zest Lab's unethical behavior has compromised the integrity of this case from the start," the spokeswoman said via email. "We expect our suppliers to uphold the highest ethical standards and will continue to advocate for fairness and justice, including pursuing an appeal and post-trial motions."

The Case

Zest created the Zest Fresh Solution to use in produce supply chain logistics. The technology could reduce food waste by predicting when food would expire based on a complex process of combining and analyzing data from every stage of the supply chain.

The process constantly recalculated the predicted shelf life of produce using machine learning, according to Zest's filings in the case. Zest said the technology would prevent billions of dollars in produce from being thrown into the trash while at the same time helping the environment.

The case was complex, generating mountains of evidence and discovery documents.

In addition to ordering a new trial in December 2023, Moody also required Zest and Walmart to go to a settlement conference.

"Zest certainly participated in good faith and had an interest in settling it, but it did not settle," attorney Scott Richardson of McDaniel Wolff PLLC of Little Rock, who represented Zest, told Arkansas Business. "It was always confidential."

Preparing for the Retrial

Judge Moody wanted to restrict the retrial to the issues in the first trial, except for Walmart's new defense.

Ryan said that "doing a retrial that is largely limited to the first trial is an incredibly challenging universe to try a case in."

Some of the challenges involved tracking down employees and witnesses who had moved. "Walmart is such a big company and you have a lot of former employee witnesses who are out of state too, so you can't really compel them to court in Arkansas. So that complicated things," Richardson said.

Zest alleged that it shared the details of its trade secret Zest Fresh Process with Walmart under a nondisclosure agreement. Zest expected Walmart to use the Zest Fresh Process. "But Zest presented evidence to the jury that Walmart went from a customer to a competitor when it

secretly planned to develop its own competing technology using Zest's trade secrets and eventually filed a secret patent on Zest's own technology," according to a news release last month from Bartko Pavia. "The patent eventually published, destroying Zest's trade secret."

Another difficulty in retrying a case is preparing witnesses. There's a larger scope of information for witnesses to remember, including statements made in their depositions and what they said at the first trial, Richardson said.

Ryan said that attorneys retrying a case have to be mindful of witnesses' statements.

"The lead witness for Zest, fortunately for us, is one of the smartest, most amazing and brilliant people that I've ever known, Peter Mehring," Zest's former CEO, Ryan said.

Ryan said that Mehring has a "truly remarkable memory for facts, events and people that truly enhanced Zest credibility with the jury."

In the first trial, Zest's legal team had asked Moody to award them \$46 million in attorneys' fees and \$1.3 million in costs.

But that amount was never awarded.

"The second trial became another very expensive case to try," Richardson said. "It takes a large legal team, spending lots and lots of hours combing through documents and just getting the case ready to try."

Zest also was represented by Brittany Webb of McDaniel Wolff PLLC of Little Rock, H. Christopher Bartolomucci of Schaerr Jaffe LLP of Washington, D.C., and Kate M. Falkenstien of Blue Peak Law Group LLP.

As of Tuesday, Zest's legal team has not filed a motion for costs or legal fees.

It was a two-week trial. “And then at the end of the trial, you certainly take the risk of getting a zero from the jury,” Richardson said. “So it’s a massive investment for a small company whose business has been turned upside down to keep fighting against one of the largest companies in the world.”

After the Verdict

Ryan said that Zest’s product was “truly a really important revolutionary piece of technology which could have reduced global food waste by billions a year and that technology was destroyed here.

“So the jury got this. The jury really got this.”

Zest isn’t operating these days.

“The hope is that when Zest gets this money, they can find a way to re-inject themselves into this area of technology,” Ryan said.

“But it’s challenging because their core technology was made public by Walmart, so it’s very challenging for them to re-engage.”