



## And The Defense Wins

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On October 31, 2011, Judge William Duffey of the United States District Court for the Northern District of Georgia granted summary judgment in favor of Novartis Pharmaceuticals Corporation in a case alleging that the plaintiff's treatment with Novartis' drugs Aredia and Zometa caused osteonecrosis of the jaw (ONJ). *Eberhart v. Novartis Pharmaceuticals Corporation*, No. 1:08-cv-2542- WSD, slip op. (October 31, 2011, N.D. Ga.). Novartis was successfully represented by DRI members [Joe G. Hollingsworth](#), [Katharine R. Latimer](#), [William J. Cople III](#) and [Robert E. Johnston](#) of **Hollingsworth LLP** in Washington, D.C., along with other attorneys from that firm and an Atlanta law firm.

The case, which had been set for trial in January 2012, is one of a number of cases that have been remanded out of the multidistrict litigation captioned *In re Aredia and Zometa Pharmaceutical Products Liability Litigation* that is currently pending before the United States District Court for the Middle District of Tennessee. There have been three trials, to date, in cases from state or federal consolidated litigation regarding Aredia and Zometa. Novartis obtained a favorable jury verdict in two of those actions: *Hogan v. Novartis Pharmaceuticals Corporation*, 1:06-cv-00260 (E.D.N.Y. May 26, 2011) and *Bessemer v. Novartis Pharmaceuticals Corporation*, Docket No. MID-L-1835-08-MT (N.J. Middlesex County Ct. Oct. 6, 2010). Post-trial motions for judgment as a matter of law and for a new trial remaining pending in the third: *Fussman v. Novartis Pharmaceuticals Corporation*, 1:06-cv-00149 (M.D.N.C. Nov. 22, 2010).

In *Eberhart*, Judge Duffey concluded that the plaintiff offered no evidence that Novartis' alleged failure to warn of the association between Aredia and Zometa and ONJ proximately caused any of her alleged injuries. The plaintiff had argued that the extraction of her molar tooth (number 19) precipitated the problems she had in her jaw. She contended that, if Novartis had properly warned her oncologist and dental health care providers about the increased risk of ONJ caused by dental extractions while taking Aredia and Zometa, she would have had endodontic therapy, rather than have the tooth extracted. Novartis offered evidence, in the form of a declaration from an endodontist who treated Ms. Eberhart, that endodontic therapy was not an option. Novartis argued, therefore, that the extraction could not have been avoided even if Ms. Eberhart's oncologist and dental health providers had been aware of the association between Aredia and Zometa and ONJ.

Judge Duffey concluded that Novartis had offered evidence negating the plaintiff's argument that the tooth could have been saved through endodontic intervention and noted that the plaintiff had failed to offer any evidence that endodontic therapy was a viable option. Absent any evidence that the extraction could have

been avoided, Judge Duffey held that the alleged failure to warn did not proximately cause the injury because the extraction that the plaintiff claimed precipitated her ONJ would have been required, even if all of the health care providers in the case had been aware of the alleged increased risk of ONJ in persons treated with Aredia and Zometa after an extraction. As a result, the court granted summary judgment in favor of Novartis.

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