



The Voice

And The Defense Wins

Published 12-16-15 by DRI

Katharine R. Latimer, Heather Pigman, and Constantine Passodelis



On October 7, 2015, Judge Mark Hornak granted complete summary judgment to firm client Novartis Pharmaceuticals Corporation because plaintiffs failed to satisfy their proximate cause burden in a failure-to-warn lawsuit alleging that the prescription drugs Aredia and Zometa caused osteonecrosis of the jaw (“ONJ”). Novartis Pharmaceuticals Corporation was represented by [Katharine R. Latimer](#) and [Heather Pigman](#) of Hollingsworth LLP, as well as [Constantine Passodelis](#) of Jones Passodelis, PLLC.

Based on the deposition testimony of the oncologists who prescribed these Novartis drugs to Mr. Bock, Judge Hornak concluded that “both physicians indicated that they would still prescribe the drug today if presented with a patient such as Bock because, in their medical judgment, the benefits of the drug significantly outweigh the risks.” *Id.* at 14–15. Judge Hornak also pointed out that Mr. Bock “consented to each of the unavoidable dental procedures that ultimately precipitated his ONJ despite being thoroughly warned as to the potential risks.” *Id.* at 15. Judge Hornak rejected plaintiffs’ argument that a summary judgment decision should be deferred until they have presented expert testimony regarding what information should have been provided in the Aredia/Zometa warning labels. *Id.* (“the issue raised in the instant motion is proximate cause, rather than the adequacy of the warnings”). He also rejected plaintiffs’ contention that the oncologist’s testimony lacked credibility and must be evaluated by a jury. *Id.* at 17 (explaining that plaintiffs have “not pointed to any evidence in the record that might contradict each physician’s testimony” and that “a plaintiff cannot survive a well-supported summary judgment motion by simply asserting that the opposing witnesses lack credibility”).

To learn more about DRI, an international membership organization of attorneys defending the interests of business and individuals in civil litigation, visit www.dri.org.