

WINNING | A SPECIAL REPORT

"I just show up in court and wing it," said no Winning Litigator—ever. But the lawyers in our special report bring more to the table than just meticulous preparation. They find new applications for decades-old laws. They take mind-numbing details and condense them into tidy bits of information. They strike the right balance of likability and decorum with fact-finders. They regroup and evaluate every step of the way. And when it's all over but the bill-paying, they end up with some very happy clients.



HOLLINGSWORTH

KIRBY GRIFFIS, PARTNER

Kirby Griffis faced a rough playing field as counsel for Novartis Corp. in serial litigation over a cancer-fighting drug alleged to cause the death of bone

tissue in the jaw. Novartis had already lost two cases in Florida, and he was set to go to trial before a judge whose rulings suggested she thought this third case would go the same way.

He faced an undeniably sympathetic plaintiff—a 67-year-old woman in a wheelchair who beat late-stage breast cancer that had metastasized to her bones. Novartis' Zometa saved her life, only to cause osteonecrosis—bone death, which leaves sufferers in constant pain and sometimes facially disfigured. While Griffis had terrific scientists as his expert witnesses, some were terrible public speakers, and so left a bad impression after multiple corporate witnessess.

Plaintiff's counsel compiled a series of documents that purported to show that Novartis failed to warn doctors of the risk even after reports linking Zometa to osteonecrosis first surfaced.

"Plaintiff pieced together video depositions of multiple corporate witnesses, which, along with internal emails and documents, they used to piece together a negligence story," Griffis said.

But Griffis completely changed the narrative. He took on the role as educator, telling jurors the case was really about cancer. "We cast ourselves as the good guys. These plaintiffs would not be alive today without our drug."

Griffis used a simple flip chart. He explained metastasis, how Zometa stopped it, how the drug saved the lives of women who otherwise would have been dead rather than sitting in court.

"It was a case we viewed that could have easily gone the other way," said Charna Gerstenhaber, head of litigation at Novartis. "It was a very significant moment in terms of plaintiff counsel's enthusiasm for the litigation."

—SUSAN KOSTAL

TRIAL TIPS

- "Your main job is to tell your story, not to respond point-by-point to that of the other side," said Kirby Griffis.
- "Don't advance weak arguments unless you absolutely must," he said. "Making a weak argument undermines your strong arguments, and makes you more likely to lose."
- "Be brief, be clear, and be honest," he said.
- "The 'facts' from which you must construct your story are not those you ... wish were true. They are the things the jury will believe are true," he said.

