



And The Defense Wins

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Joe G. Hollingsworth, Katharine R. Latimer, Rebecca A. Womeldorf, and Beth S. Rose



On June 14, 2013, the New Jersey Appellate Division affirmed the grant of summary judgment in favor of firm client Novartis Pharmaceuticals Corporation on the grounds that Virginia's statute of limitations barred the case in its entirety. *Irby v. Novartis Pharm. Corp.*, No. A-4871-11T3 (N.J. Super. Ct. App. Div. June 14, 2013). Novartis was represented in *Irby* by DRI members [Joe G. Hollingsworth](#), [Katharine R. Latimer](#), and [Rebecca A. Womeldorf](#) of [Hollingsworth LLP](#) in Washington, D.C., and [Beth S. Rose](#) of [Sills Cummis & Gross P.C.](#) in Newark, New Jersey. Mr. Irby alleged in a lawsuit filed in New Jersey that Novartis's drug Zometa caused him to develop osteonecrosis of the jaw. Oncologists—and even plaintiff's experts in this litigation—widely acknowledge that Zometa has revolutionized the treatment of the ravaging and painful symptoms of cancer, especially in patients whose cancer has metastasized to their bones.

The plaintiff appealed Judge Jessica Mayer's ruling that Virginia's statute of limitations barred the plaintiff's claims, arguing that the trial court should have applied New Jersey's statute of limitations because the parties stipulated New Jersey law would apply to procedural issues and statute of limitations is a procedural issue in New Jersey. The plaintiff also argued a choice of law analysis leads to application of New Jersey law because Novartis is a New Jersey corporation and company decisions regarding Zometa occurred in New Jersey. The plaintiff resided in Virginia and was treated with Zometa in Virginia.

The three-judge panel of the New Jersey Appellate Division rejected plaintiff's arguments and issued a unanimous affirmance in favor of Novartis, finding that "the parties' agreement to utilize the procedural law of New Jersey did not upend th[e] forty-year history of New Jersey's application of the statute of limitations of the state where the cause of action arises absent substantial New Jersey interest in the matter." *Id.*

The plaintiff initially argued in the trial court that his lawsuit had been saved and was timely under Virginia's statute of limitations because of cross-jurisdictional class action tolling. *Irby v. Novartis Pharm. Corp.*, No. MID-L-1815-08 MT, 8-10 (N.J. Super. Ct. Mar. 16, 2012) (citing *Casey v. Merck & Co.*, 2012 Va. LEXIS 48 (Va. Mar. 2, 2012)). The trial court rejected that argument and plaintiff's alternative argument that New Jersey law should govern the statute of limitations issue, inasmuch as plaintiff had stipulated that Virginia law applied: "Plaintiff cannot argue in the alternative that New Jersey's period of limitations governs his affirmative claims, having failed to raise that issue by way of a timely choice of law motion." *Id.* at 10-11; see also *id.* at 10 (stating that "it is unfair to [Novartis] and this court for Mr. Irby to suggest at this late juncture in the litigation that a question remains as to which state's law governed" the

statute of limitations issue”). Judge Mayer denied plaintiff’s motion for reconsideration on May 11, 2012 after hearing oral argument. *Irby v. Novartis Pharm. Corp.*, No. MID-L-1815-08 MT (N.J. Super. Ct. May 11, 2012).

The New Jersey Supreme Court created an Aredia/Zometa Mass Tort Proceeding in 2008, and the proceeding currently encompasses approximately 140 cases. Novartis has won defense verdicts in the only two cases that have proceeded to trial in the New Jersey consolidated litigation, *Meng v. Novartis Pharm. Corp.*, No. MID-L-7670-07-MT (N.J. Super. Ct. Law Div. May 15, 2013), and *Bessemer v. Novartis Pharm. Corp.*, No. MID-L-1835-08-MT (N.J. Super. Ct. Law Div. Oct. 22, 2010), *aff’d*, No. A-2069-10T1, 2012 WL 2120777 (N.J. Super. Ct. App. Div. June 13, 2012) (cert. denied). Both cases were selected by plaintiffs as trial work-up cases. Novartis also prevailed in two other cases selected for the first round of discovery work up, one on summary judgment and one dismissal by plaintiff after Novartis filed a summary judgment motion, the plaintiff conceding he could not prevail. Similarly, Novartis prevailed in three cases selected for the second round of trial work-up cases, including *Irby* on summary judgment and two other cases dismissed by plaintiffs during discovery and dispositive briefing. Plaintiff withdrew the fourth case from the trial calendar as the trial date approached.

Hollingsworth LLP acts as national counsel for Novartis in the Aredia/Zometa litigation.

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