



And The Defense Wins

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On June 27, 2013, the U.S. District Court for the Southern District of Florida granted Novartis Pharmaceuticals Corporation's motion for summary judgment based on judicial estoppel in *Taylor v. Novartis Pharmaceuticals Corporation*, No. 0:06-cv-61337-JIC (S.D. Fla. Jun. 27, 2013). Novartis was represented in this matter by DRI members [Bruce J. Berger](#) and [Matthew J. Malinowski](#), partners at **Hollingsworth LLP** in Washington, D.C., who teamed with another partner.

Plaintiff Keith Taylor filed for Chapter 7 bankruptcy in 2010, three and a half years after filing his lawsuit against Novartis. During his bankruptcy proceedings, the plaintiff "inexplicably" failed to disclose his pending claim against Novartis to the bankruptcy court as required. Judge James Cohn determined that "the record unequivocally establishes that Plaintiff had a motive to conceal this lawsuit from the Bankruptcy Court: namely to obtain a discharge of nearly \$200,000 in debt while any funds he later recovered in this case would be his own."

Noting that "[f]ull and honest disclosures in bankruptcy proceedings are 'crucial to the system[]'s effective functioning," the court concluded that "Plaintiff has made a mockery of the judicial system." Based on these conclusions, the court applied the doctrine of judicial estoppel to protect the integrity of the judicial process and dismissed plaintiff's case, preventing him from asserting the inconsistent position that he had a claim against Novartis after stating under oath in the bankruptcy proceeding that he did not.

This case was part of the ongoing Aredia and Zometa multidistrict litigation, *In re: Aredia and Zometa Prods. Liab. Litig.*, No. 3:06-MD- 01760 (TJC) (M.D. Tenn.), and had been remanded to the Southern District of Florida for a trial that was scheduled to begin this fall.

The *Taylor* decision is the latest in a string of Novartis wins in federal and state courts in litigation alleging that ONJ resulted from treatment with Aredia and/or Zometa, which are used to treat patients who have cancer that has metastasized to bone.

As of the date of this ruling, Novartis has won 49 cases on summary judgment and obtained dismissal of over 150 other cases in the Aredia/Zometa federal and state consolidated litigations.

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