



## The Voice

### And The Defense Wins

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On June 17, 2015, the Louisiana Court of Appeal, Fourth Circuit, found that the trial court erred in granting plaintiff's motion for partial summary judgment in *Wayland Ezeb v. Sandoz Pharmaceuticals Corporation*, and reversed the judgment on the ground the trial court had misapplied the law of the case doctrine. *Ezeb v. Sandoz Pharm.*, 2015-C-0204 (La. App. 4 Cir. 6/17/15) ("Fourth Cir. Opinion"). Novartis was represented by [Kirby T. Griffis](#) and [Buffy J. Mims](#) of Hollingsworth LLP.

Plaintiff Wayland Ezeb suffered from paranoid schizophrenia since early childhood. As part of his treatment, he was prescribed Clozaril, an anti-psychotic medication manufactured by Novartis (then Sandoz) and distributed by Caremark as part of a patient safety program. Plaintiff filed suit against numerous defendants, including Novartis and Caremark, for injuries he alleged he sustained from his use of Clozaril.

In 2008, Caremark moved for summary judgment, alleging that the plaintiff was unable to establish any negligence on Caremark's part. In its motion, Caremark argued that its employee merely passed information between plaintiff's treating physician and Novartis's employee, Dr. Michael Krassner. Plaintiff did not oppose that motion and it was granted by the trial court without any factual or legal findings.

In December 2014, plaintiff filed a partial summary judgment against Novartis, citing the 2008 summary judgment as law of the case. Plaintiff argued that the order granting Caremark's motion for summary judgment established that Novartis, through Dr. Krassner, passed information directly to Dr. Dowling about the dosing of Clozaril, and that the information was an inadequate instruction under the Louisiana Products Liability Act ("LPLA"). The law of the case doctrine is a discretionary guide wherein a court will not usually reconsider its own prior rulings on the law in the same case in order to avoid re-litigation and inconsistent results. Novartis opposed the motion, arguing that the law of the case doctrine was inapplicable because Caremark's motion involved different parties, a different theory of liability, and different material facts. Novartis also argued that the Caremark motion did not challenge the adequacy of Dr. Krassner's instructions. The trial court agreed with plaintiff, however, and granted summary judgment on the ground that the law of the case doctrine applied.

The Louisiana Fourth Circuit overturned that judgment, stating that "the trial court erroneously applied the law of the case doctrine." Fourth Cir. Opinion at 6. The court held:

[T]he law of the case doctrine applies to the same parties. Here, Novartis is a separate and distinct defendant from Caremark. Further, the doctrine is used to avoid litigation of the same issues. Caremark's issue was negligence, the issue before the trial court is Novartis' failure to warn. The purpose of the doctrine, to avoid relitigation; here, the trial court has not previously ruled upon Novartis' acts under the LPLA.

*Id.* In his concurring opinion, Judge Landrieu similarly stated, "[t]he absence of material issues of fact as to Caremark's liability does not become law of the case as to Novartis, an entirely different defendant." Due to the trial court's incorrect application of the law of the case, the Fourth Circuit reversed the trial court's order granting plaintiff's partial motion for summary judgment.

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