



The Voice

And The Defense Wins

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DRI members [William J. Cople III](#) and [Buffy J. Mims](#) of **Hollingsworth LLP** in Washington, D.C., recently achieved a complete defense verdict in favor of Novartis Pharmaceuticals Corporation.

After a seven-day trial involving Aredia and Zometa, medicines used to prevent the devastating consequences of bone damage in multiple myeloma patients and cancer patients suffering from metastases to bone, and a full day's deliberations, a federal jury in Raleigh, North Carolina, returned a unanimous verdict in favor of Novartis. *Earp v. Novartis Pharmaceuticals Corporation*, No. 5:11-cv-680-D (E.D.N.C. May 14, 2014).

The plaintiff, Mr. Earp, alleged that he developed osteonecrosis of the jaw (ONJ) as a result of receiving Aredia and Zometa as part of his treatment for multiple myeloma. Novartis successfully argued that Mr. Earp's oncologist would have prescribed the medicines to him regardless of the ONJ risk. Recognizing the extraordinary value that the medicines confer, the jury rejected the plaintiff's North Carolina-based failure-to-warn claim, even after finding for the plaintiff on medical causation and warning adequacy, by answering "no" to the following question: "Did Mr. Earp prove by a preponderance of the evidence that Novartis's unreasonable failure to provide an adequate warning or instruction concerning the use of Aredia and Zometa was a proximate cause of Mr. Earp's osteonecrosis of the jaw?"

Earlier, in an oral order on May 9, 2014, the judge granted a judgment as a matter of law for Novartis on the plaintiff's punitive damages claim. The plaintiff had claimed that he was entitled to punitive damages under North Carolina's "willful and wanton" standard. However, the judge ruled that the plaintiff had not "presented sufficient evidence to allow a rational jury to find willful or wanton conduct on the part of Novartis' officers, directors or managers by clear and convincing evidence." The judge also ruled that "no rational jury could say, without hesitancy, that Novartis' officers, directors or managers participated in or condoned the requisite willful or wanton conduct and that they knew or should have known that such conduct was reasonably likely to result in injury." Then on May 12, 2014, in an oral order, the judge granted a judgment as a matter of law to Novartis on the plaintiff's implied warranty claim.

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