

Novartis Picks Up Win In Okla. Bone Drug Injury Suit

By **Greg Ryan**

Law360, New York (July 18, 2012, 7:19 PM EDT) -- An Oklahoma federal judge ruled Wednesday that Novartis Pharmaceutical Corp. cannot be held liable for the jaw deterioration of an Aredia and Zometa user because there is no indication different advice from his physician would have prevented his condition.

U.S. District Judge Tim Leonard granted summary judgment to the drugmaker, in a suit that was part of the multidistrict litigation in Tennessee over injuries allegedly caused by the bone drugs before it was remanded to Oklahoma for trial.

The plaintiff, the widow of Rick Ingram, who died in July 2004 after suffering from multiple myeloma, cannot blame any failure to warn on the part of Novartis for the osteonecrosis of the jaw, or ONJ, according to the judge. Ingram's physician, oncologist Khader Hussein, said he would have prescribed Aredia for Ingram even if he had known of the risk of jaw injury, the judge said.

"Based on Dr. Hussein's unequivocal and undisputed testimony, the 'burden shifts rather heavily back upon' the plaintiff to either 'discredit the physicians' testimony or call into question the substance of the testimony, or otherwise demonstrate that the alleged failure to warn was the proximate cause' of Mr. Ingram's injuries," Judge Leonard said.

The plaintiff attempted to overcome Hussein's testimony by pointing to his admission that he has changed the advice he gives bone drug patients. The physician now tells patients to have a dental exam before the start of treatment, to fix any dental issues before starting the drug, to tell his or her dentist about being on the drug, to refrain from certain dental procedures and to stop the drug if problems arise, the plaintiff said. The onset of ONJ has sometimes been linked to dental surgery.

Ingram had a tooth extracted while he was on one of the bone drugs — he took both Aredia and Zometa at different points — but Hussein never told him to tell his dentist about the drug, to avoid tooth extractions or to stop the drug if he was having problems with his teeth, according to the plaintiff. Judge Leonard maintained, however, that the plaintiff's arguments did not save her case.

"These mere arguments are insufficient at the summary judgment stage to demonstrate how the changed practices would have prevented injury to Mr. Ingram or how his injury would have been avoided had the new prescribing practices identified by Dr. Hussein been implemented in Mr. Ingram's case," the judge said.

The plaintiff's own expert testified that Ingram had already had ONJ for more than two years by the time of tooth extraction, the judge added.

Judge Leonard also granted summary judgment to Novartis on the plaintiff's wrongful death claim, which he said didn't even appear in her complaint.

"We are pleased with the judge's decision and believe that Zometa Injection and Aredia are effective options for cancer patients with bone metastases and hypercalcemia of malignancy," Novartis said in a statement.

An attorney for the plaintiff could not immediately be reached for comment.

The ruling follows an appeals court's decision in June to uphold judgments for Novartis in the first bellwether trial in consolidated litigation in New Jersey. That followed a victory for Novartis before the Sixth Circuit, when a panel affirmed that the company was not liable for a patient's ONJ.

The plaintiff is represented by Robert G. Germany of Pittman Germany Roberts & Welsh LLP and Michael M. Blue of Blue Law.

Novartis is represented by Joe G. Hollingsworth, Katharine R. Latimer, William J. Cople III, Kirby T. Griffis and Buffy J. Mims of Hollingsworth LLP and Thomas E. Steichen and Vani Singhal of McAfee & Taft PC.

The case is Ingram et al. v. Novartis Pharmaceutical Corp., case number 5:05-cv-00913, in the U.S. District Court for the Western District of Oklahoma.

--Editing by Kat Laskowski.