

Novartis Prevails In Bone Drug Trial In NC

By **Jeff Sistrunk**

Law360, Los Angeles (May 14, 2014, 8:39 PM EDT) -- A North Carolina federal jury found Wednesday that Novartis Pharmaceutical Corp.'s failure to provide an adequate warning regarding the use of its bone drugs Zometa and Aredia didn't proximately cause a user's jaw injury, handing the company another victory in a far-reaching product liability battle over the drugs.

Following a seven-day trial, the jury returned a verdict in favor of Novartis on plaintiff Jimmy Earp's state law failure-to-warn claim. Earp alleged he developed osteonecrosis — also known as "bone death" — of the jaw as a result of using Aredia and Zometa as part of a treatment regimen for his multiple myeloma.

John Vecchione of Valad & Vecchione PLLC, an attorney for Earp, noted that the jury found "that Mr. Earp was injured by Novartis's drugs and that they did not warn him."

"Those are key findings both in this case and the many facing Novartis around the country," Vecchione said.

An attorney for Novartis did not immediately respond to a request for comment late Wednesday.

The jury found that Earp proved by a preponderance of the evidence that one or both of the drugs caused him to develop osteonecrosis of the jaw, and that Novartis "unreasonably failed" to provide an adequate warning or instruction concerning use of the drugs to Earp's prescribing physicians. But the jury still rejected Earp's failure-to-warn claim because it determined the plaintiff didn't prove that Novartis' conduct was a proximate cause of his injury.

The verdict came several days after the trial judge, U.S. District Judge James Dever III, ruled that Novartis couldn't be held liable for punitive damages in the case because there wasn't enough evidence to prove its executives acted wrongfully. Judge Dever also granted judgment as a matter of law for Novartis on Earp's implied warranty claim.

Earp's suit is one of a multitude filed against Novartis by plaintiffs who claim they developed osteonecrosis of the jaw after using Zometa, Aredia, or both.

In April, a Florida federal jury found in Novartis' favor after it concluded that the company didn't negligently fail to sufficiently warn a prescribing physician of the risks of jaw injuries allegedly caused by the bone drugs. A month earlier, an Oregon federal judge ruled that Novartis can't be held liable for a deceased Aredia and Zometa user's osteonecrosis of the jaw.

But Novartis has also suffered some setbacks along the road. In early 2013, a Jacksonville federal jury awarded \$200,000 in compensatory damages to J. Hunter Chiles III and \$50,000 to his wife, Dianna Chiles, for loss of consortium in their case against Novartis. The jury in the Chiles case was allowed to consider punitive damages, but it opted not to impose them on Novartis.

In September, Nancy Guenther was awarded \$300,000 for medical expenses and \$1 million for the physical and emotional pain she suffered as the result of her osteonecrosis of the jaw, which was purportedly caused by Zometa.

Novartis is appealing the Chiles and Guenther verdicts.

The Earps are represented by Samuel Ranchor Harris of Girardi Keese, Lyn Broom of Teague Rotenstreich Stanaland Fox & Holt, John Vecchione of Valad & Vecchione PLLC and Elizabeth Odette of Lockridge Grindal Nauen PLLP.

Novartis is represented by William J. Cople III and Buffy J. Mims of Hollingsworth LLP and Susan P. McWilliams of Nexsen Pruet LLC.

The case is Jimmy Earp et al. v. Novartis Pharmaceuticals Corp., case number 5:11-cv-00680, in the U.S. District Court for the Eastern District of North Carolina.

--Additional reporting by Juan Carlos Rodriguez, Kurt Orzeck and Greg Ryan. Editing by Richard McVay.