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The Voice

And The Defense Wins

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On April 27, 2015, the United States District Court for the Southern District of Mississippi dismissed with prejudice a personal injury claim arising from an alleged defect in an intraocular lens manufactured by CIBA Vision Corporation (now part of Alcon), holding that the plaintiff's claims were both expressly preempted and untimely. *Williams v. CIBA Vision Corporation*, No. 13-cv-00368 (S.D. Miss. April 27, 2015). Alcon was represented by **Eric G. Lasker and Stephen Klein** of **Hollingsworth LLP**.

Dovie Williams sustained injuries to her right eye after receiving a MemoryLens IOL replacement lens during cataract surgery on October 15, 1999. Ms. Williams alleged that she began experiencing difficulties with her left eye over the next couple of years and that in 2012 she experienced a stabbing pain in her left eye that required that the lens be extracted. Ms. Williams alleged that diagnostic testing identified a foreign substance on the extracted lens. Ms. Williams claimed that CIBA Vision had deviated from the FDA-approved manufacturing process for the lens by employing a modified buffered tumbling process and that this modified process had allowed for biofilm formation within the lens which caused patients to suffer severe side effects and led to a voluntary recall of the MemoryLens IOL.

In dismissing the complaint first on preemption grounds, the district court held that plaintiff could only avoid express preemption under the MDA if she could establish a parallel claim, *i.e.*, that the alleged manufacturing defect was caused by a violation of federal regulations and that the defect caused the plaintiff's injury. The court rejected plaintiff's attempt to establish a parallel claim based upon CIBA Vision's use of the modified buffered tumbling process. While acknowledging that the complaint asserts the basic legal elements of a parallel claim, the court found that the complaint did not state any facts to support the conclusory allegation that the buffered tumbling process violated the pre-approved manufacturing process or any requirement specific to the MemoryLens IOL.

In separately dismissing the complaint on limitations grounds, the district court rejected plaintiff's reliance on the discovery rule, holding that the rule is only available in cases of latent injury. The court noted that the facts set forth in the complaint reflect chronic ongoing medical complaints which began almost immediately following the implantation of the IOL in 1999. The court likewise rejected plaintiff's arguments that she was required to have a medical opinion linking her eye problems to the IOL before her cause of action could accrue and that her alleged new symptoms in 2012 constituted a separate injury for limitations purposes, holding that both arguments were foreclosed by Mississippi law.

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