



And The Defense Wins

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The United States District Court for the Western District of Arkansas granted Novartis Pharmaceuticals Corporation's motion to dismiss in *McDaniel v. Novartis Pharmaceuticals Corporation* because, "on the eve of trial, Plaintiff requests that this Court travel back in time and cure the procedural missteps done in the course of this litigation," which "the Court cannot and will not do." The case was filed in the United States District Court for the Middle District of Tennessee and was centralized in the Aredia and Zometa multidistrict litigation. The case was remanded to the Western District of Arkansas, where the McDaniel family resided and was set for a February 2012 trial. At the time of trial, the putative plaintiff was the son of the allegedly injured party, who had died as a result of Multiple Myeloma. Novartis was represented by DRI members [Joe Hollingsworth](#), [Katharine R. Latimer](#), [Donald W. Fowler](#), [Neil S. Bromberg](#) and [James M. Sullivan](#) of Hollingsworth LLP in Washington, D.C., and [Ronald D. Harrison](#) of Ledbetter, Cogbill, Arnold & Harrison, LLP in Fort Smith, Arkansas.

In its Order dismissing the case, the court held that: (1) "both Orville and Brad failed to follow the terms of the MDL court's case management order in substituting a proper party in interest within the time period specified by the order and prior to remand of the case" for trial; (2) "both Orville and Brad failed to meet F.R.C.P. 25's requirements for proper substitution of a deceased party;" and (3) "both Orville and Brad failed to properly revive the claim according to A.C.A. § 16-62-108 within a year of Mrs. McDaniel's death." The court stated, "[t]he simple fact is that Plaintiff's counsel had plenty of time to correct the procedural deficiency created by the death of Mrs. McDaniel." As a result, the court granted Novartis's motion to dismiss the case with prejudice.

The plaintiffs were represented by the law firms of Pittman, Germany, Roberts & Welsh in Jacksonville, Mississippi; Flynn and Radford in Brentwood, Tennessee; and Keith, Miller, Butler, Schneider & Pawlik, PLLC in Rogers, Arkansas.

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