



And The Defense Wins

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On March 16, 2012, Judge Jessica Mayer granted summary judgment for firm client Novartis Pharmaceuticals Corporation because Virginia's statute of limitations barred the case in its entirety. *Irby v. Novartis Pharm. Corp.*, No. MID-L-1815-08 MT (N.J. Super. Ct. Mar. 16, 2012). Novartis was represented by DRI members [Joe G. Hollingsworth](#), [Katharine R. Latimer](#), and [Neil S. Bromberg](#) of **Hollingsworth LLP** in Washington, D.C., and [Beth S. Rose](#) of **Sills Cummis & Gross P.C.** in Newark, New Jersey.

Charles Irby alleged in a lawsuit filed in New Jersey that Novartis's drug Zometa caused him to develop osteonecrosis of the jaw. Judge Mayer agreed with Novartis that the limitations period begins to run on personal injury claims in Virginia "as soon as the alleged injury occurs, not at the time of diagnosis or discovery." *Id.* at 8 (quotation marks omitted). The plaintiff filed his complaint approximately three months too late. *Id.* The court rejected plaintiff's argument that his lawsuit had been saved and was timely because of cross-jurisdictional class action tolling. *Id.* at 8-10 (citing *Casey v. Merck & Co.*, 2012 Va. LEXIS 48 (Va. Mar. 2, 2012)). Judge Mayer rejected plaintiff's alternative argument that New Jersey law should govern the statute of limitations issue, inasmuch as plaintiff had stipulated that Virginia law applied: "Plaintiff cannot argue in the alternative that New Jersey's period of limitations governs his affirmative claims, having failed to raise that issue by way of a timely choice of law motion." *Id.* at 10-11; see also *id.* at 10 (stating that "it is unfair to [Novartis] and this court for Mr. Irby to suggest at this late juncture in the litigation that a question remains as to which state's law governed" the statute of limitations issue").

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