

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, NORFOLK DIVISION

CareFirst of Maryland, et al. v. Johnson & Johnson, et al.

CareFirst · No. 2:23-cv-629 · Decided January 14, 2026

SUMMARY

The United States District Court for the Eastern District of Virginia rules on Johnson & Johnson and Janssen Biotech’s motion for reconsideration of a summary judgment order and motions in limine. The court grants reconsideration in part, vacates the prior ruling concerning the alleged unlawful acquisition of Momenta manufacturing patents, and grants summary judgment for J&J on that theory. The court also addresses the admissibility of privilege-log entries, document metadata, attorney-client privilege invocations, and evidence concerning pretrial disputes.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia, Norfolk Division
WRITING FOR THE COURT	Jamar K. Walker
JURISDICTION	United States District Court for the Eastern District of Virginia, Norfolk Division
DECIDED	January 14, 2026
DOCKET	2:23-cv-629
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 54(b) for reconsideration of an interlocutory summary judgment order and also moved in limine to restrict trial evidence concerning privilege logs, metadata, pretrial proceedings, and privilege invocations.
STANDARD OF REVIEW	Under Federal Rule of Civil Procedure 54(b), an interlocutory order may be revised before final judgment. Reconsideration may be warranted for an intervening change in controlling law, newly available evidence, clear legal error, manifest injustice, patent misunderstanding, a decision outside the adversarial issues, or an error of apprehension. Summary judgment is proper when the admissible evidence does not create a genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.

TOPICS

motion for reconsideration

summary judgment

attorney client privilege

evidence

patent law

PRACTICE AREAS

antitrust

commercial litigation

intellectual property

evidence

civil procedure

health law

QUESTIONS PRESENTED

1. Whether Johnson & Johnson was entitled to reconsideration and summary judgment on CareFirst's monopolization theory based on the acquisition of four Momenta manufacturing patents.
2. Whether CareFirst could rely on the Jostins and Granlund studies as a basis for its Walker Process fraud claim after the Court denied leave to amend the complaint to add those studies.
3. Whether Dr. Luis Ralat's deletion of the Jostins and Granlund studies could support a reasonable inference of intent to defraud the PTO.
4. Whether the evidence created a genuine dispute regarding a duty-bound employee's knowledge of the materiality of the Ochsenkühn study and deliberate withholding of it from the PTO.
5. What evidence concerning privilege logs, metadata, privilege invocations, pretrial disputes, and deposition testimony could be presented at trial.

HOLDINGS

1. Johnson & Johnson was entitled to reconsideration, and CareFirst failed to present admissible evidence creating a genuine dispute that Johnson & Johnson acquired the Momenta manufacturing patents with intent to exclude rivals on a basis other than efficiency.
2. CareFirst may not use the Jostins and Granlund studies as a separate basis for Walker Process liability because the Court denied leave to amend to add that theory and CareFirst represented that it would not allege withholding those references as a separate source or theory of fraud.
3. The Court denied reconsideration of its determination that a reasonable jury could infer intent to defraud the PTO from Dr. Ralat's deletion of the Jostins and Granlund studies and his explanation that the goals of an FDA submission differed from those of a PTO submission.
4. The Court denied reconsideration of its determination that the evidence could allow a reasonable jury to find that a duty-bound Johnson & Johnson employee knew the Ochsenkühn study was material and deliberately withheld it from the PTO.
5. Privilege-log and metadata evidence may be admitted to show the fact and timing of document creation, download, or communication, subject to foundation and proper family-context evidence, but may not be used to invite an adverse inference about the substance of privileged communications.

KEY QUOTATIONS

“A district court may grant a motion for reconsideration under Rule 54(b): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available earlier; or (3) to correct a clear error of law or prevent manifest injustice.” (Opinion § II)

“A negative inference should not be drawn from the proper invocation of the attorney-client privilege.” (Opinion § III.A.iii)

“To allow negative inferences to be drawn about the subject of attorney-client privilege would contravene the very purpose of privilege: “to encourage full and frank communication between attorneys and their clients.”” (Opinion § III.A.iii)

FACTUAL BACKGROUND

CareFirst asserted Sherman Act monopolization and Walker Process fraud theories involving Johnson & Johnson's conduct concerning Stelara and related biosimilar competition. One theory alleged that Johnson & Johnson unlawfully acquired four Momenta manufacturing patents, while other theories alleged that studies or study references were withheld from the Patent and Trademark Office. The evidentiary disputes focused on Johnson & Johnson's privilege logs, document metadata, attorney-client communications, and evidence concerning the Jostins, Granlund, and Ochsenkühn studies.

PROCEDURAL HISTORY

The Court previously denied CareFirst's motion for partial summary judgment and granted in part and denied in part Johnson & Johnson's motion for summary judgment. Johnson & Johnson sought reconsideration of portions of that interlocutory order. The Court granted reconsideration in part, vacated the prior summary judgment order in part, granted summary judgment for Johnson & Johnson on the Momenta patent-acquisition monopolization theory and the Jostins and Granlund Walker Process theory, and left the Ralat and Ochsenkühn issues intact. The Court also granted and denied portions of the motions in limine.

DISPOSITION

vacated

CASES CITED

- *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514–15 (4th Cir. 2003)
- *LaFleur v. Dollar Tree Stores, Inc.*, No. 2:12-cv-363, 2014 WL 2121563, at *1 (E.D. Va. May 20, 2014)
- *Hutchinson v. Staton*, 994 F.2d 1076, 1081 (4th Cir. 1993)
- *Evans v. Trinity Industries, Inc.*, 148 F. Supp. 3d 542, 544 (E.D. Va. 2015)
- *United States v. Smithfield Foods, Inc.*, 969 F. Supp. 975, 977 (E.D. Va. 1997)
- *Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.*, 783 F.3d 976, 980 (4th Cir. 2015)
- *2311 Racing LLC v. Nat'l Ass'n for Stock Car Auto Racing, LLC*, 139 F.4th 404, 410 (4th Cir. 2025)
- *McMellon v. United States*, 387 F.3d 329, 334 (4th Cir. 2004)
- *Greenville Publ'g Co. v. Daily Reflector, Inc.*, 496 F.2d 391, 396–98 (4th Cir. 1974)

- *Advanced Health-Care Servs., Inc. v. Radford Cmty. Hosp.*, 910 F.2d 139, 147–48 (4th Cir. 1990)
- *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 602 (1985)
- *Knox Energy, LLC v. Gasco Drilling, Inc.*, 637 Fed. App'x 735, 740 (4th Cir. 2016)
- *Cage v. Harper*, No. 1:17-cv-7621, 2021 WL 3022316, at *2 (N.D. Ill. July 16, 2021), *aff'd*, 42 F.4th 734 (7th Cir. 2022)
- *In re Tudor Assocs., Ltd., II*, 20 F.3d 115, 120 (4th Cir. 1994)
- *Parker v. Prudential Ins. Co.*, 900 F.2d 772, 775 (4th Cir. 1990)
- *Sharer v. Tandberg*, No. 1:06-cv-626, 2007 WL 983849, at *1–2 (E.D. Va. Mar. 27, 2007)
- *In re Zetia (Ezetimibe) Antitrust Litig.*, No. 2:18-md-2836, 2023 WL 4156858, at *5 (E.D. Va. Apr. 5, 2023)
- *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)
- *Kennedy v. Joy Techs., Inc.*, 269 Fed. App'x 302, 308 (4th Cir. 2008)
- *Aventis Pharma S.A. v. Hospira, Inc.*, 675 F.3d 1324, 1336 (Fed. Cir. 2012)
- *Therasense, Inc. v. Becton, Dickinson & Co.*, 649 F.3d 1276 (Fed. Cir. 2011)
- *Reynolds v. N. Neck Reg'l Jail Auth.*, No. 3:07-cv-700, 2009 WL 1323224, at *1 (E.D. Va. May 11, 2009)