



# Claims Against Doctor, Clinic in Meningitis MDL Proceed

Sheri Qualters, *The National Law Journal*

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A Boston federal judge on Tuesday kept alive most claims against a Dallas clinic and doctor in multidistrict litigation involving more than 60 meningitis deaths from contaminated drugs.

U.S. District Judge Rya W. Zobel, in *In Re: New England Compounding Pharmacy Inc. Products Liability Litigation*, denied dismissal of several claims against Dallas Back Pain Management/Momentum Pain Management and Dr. Abbeselom Ghermay. The claims, which pertain to epidural steroid injections, include violation of the Texas Deceptive Trade Practices Act, negligence and gross negligence, battery and failure to warn.

She also found that plaintiffs could potentially get punitive damages, ruling that allegations that defendants willfully and knowingly failed to abide by consumer safety regulations and withheld important safety information were enough to “sustain plaintiff’s punitive damages claims at this early stage,” Zobel wrote.

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The ruling stems from drugs sold by New England Compounding, now defunct, which have been blamed to at least 64 deaths and 751 infections from fungal meningitis outbreaks starting in 2012.

The company's owners and insurers have agreed to pay \$100 million into the corporate bankruptcy for the personal injury victims.

Other parties still face liability in the multidistrict case. They include Dallas clinic and Ghermay, other clinics and doctors, and NECC's cleanroom equipment and cleaning company.

In Tuesday's decision, Zobel also rejected the defense bid to dismiss the case on the ground that it doesn't conform to the Texas Civil Practice and Remedies Code.

Zobel wrote that the Federal Rules apply and plaintiffs aren't subject to the Texas code's expert report requirements.

Zobel dismissed the plaintiffs' claims for civil conspiracy and agency, or that the defendants are vicariously liable for NECC's conduct.

On the agency claim, Zobel wrote that the complaint "contains no allegations indicating that defendants exercised any control over NECC or its conduct at all."

The ruling echoes [Zobel's late August ruling](#) that denied New Jersey and Tennessee clinics' attempts to dismiss similar claims.

This ruling, along with others about New Jersey and Tennessee clinics, shows that the court "recognizes that ordinary negligence law is the primary basis for these claims and not more restrictive state malpractice statutes," said plaintiffs' steering committee lawyer Mark Lipton of Lipton Law in Southfield, Mich.

Mark Chalos, a Nashville partner at San Francisco's Lief Cabraser Heimann & Bernstein and a plaintiffs' steering committee member, said he was "pleased" with the ruling.

"All wrongdoers should be held accountable including those who sold or injected the dangerous contaminated drugs into unsuspecting patients," he said.

One of the defense attorneys in the case, Elizabeth Fraley of Fraley & Fraley in Dallas, said that the judge's "narrowing of the claims" was "an important step toward resolution for all involved."

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