



And The Defense Wins

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Matt Malinowski



A Texas district court judge concluded that the plaintiff failed to state a claim under Texas law for innovator liability-styled claims against Novartis Pharmaceuticals Corporation. Novartis was represented by DRI member [Matt Malinowski](#), a partner in the Washington, D.C., office of **Hollingworth LLP**.

On May 7, 2020, Chief Judge Orlando L. Garcia, of the U.S. District Court for the Western District of Texas (San Antonio Division), issued an order on Novartis’s Rule 12(b) (6) motion to dismiss all counts of the complaint, including strict liability, negligent manufacturing, negligent failure to warn/fraudulent misrepresentation, breach of express and/or implied warranty, and loss of consortium, concluding that “Texas law rejects [the innovator liability] theory of liability.” *Johnson v. Novartis Pharms. Corp., et al.*, No. 5:19-cv-01087-OLG (W.D. Tex. May 7, 2020).

Judge Garcia’s decision is in accord with the great weight of authority nationwide on the question of innovator liability. See, e.g., *Trower v. Janssen Pharmaceuticals, Inc.*, 2019 WL 1571834 (D. Del. April 11, 2019); *McNair v. Johnson & Johnson*, 241 W. Va. 26, 8181 S.E.2d 852 (2018); *Guarino v. Wyeth, LLC*, 719 F.3d 1245 (11th Cir. 2013).