

## And The Defense Wins

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### Keep The Defense Wins Coming!

Please send 250–500 word summaries of your “wins,” including the case name, your firm name, your firm position, city of practice, and email address, in Word format, along with a recent color photo as an attachment (.jpg or .tiff), highest resolution file possible (*minimum* 300 ppi), to [DefenseWins@dri.org](mailto:DefenseWins@dri.org). Please note that DRI membership is a prerequisite to be listed in “And the Defense Wins,” and it may take several weeks for *The Voice* to publish your win.

### 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).

## DRI News

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### Upcoming DRI Elections

Four **Director Elected Nationally** seats on the DRI Board of Directors, plus the offices of **Second Vice President** and **Secretary-Treasurer**, will be filled at the [2020 DRI Summit](#) in Washington, D.C., October 21–24. To be considered for any position, a DRI member must first file a Declaration of Candidacy form. For more information, please contact

**Nancy Parz** at DRI headquarters: [nparz@dri.org](mailto:nparz@dri.org) or **312.698.6224**. **Declarations are due by July 1, 2020. This deadline is not being postponed.**