



• **KIMBERLY A. DOUGHERTY** •

Two years after 64 deaths and 751 illnesses resulted from a fungal meningitis outbreak that originated at a Framingham pharmaceutical company, 14 people associated with the former New England Compounding Center were indicted in federal court in December.

But 2014 also was a big year for civil litigation resulting from the public health disaster, highlighted by the formation of a \$135 million "tort trust." The fund is being created as part of NECC's bankruptcy plan and is funded by settlements with numerous defendants and potential defendants including NECC, its principals, its vendors, and entities that purchased and administered the tainted drugs.

Victims and their families who will receive compensation from the fund owe much of their thanks to Boston's Kimberly A. Dougherty of Janet, Jenner & Suggs, a rising mass torts star and the only woman appointed to the seven-lawyer NECC Plaintiffs' Steering Committee.

Dougherty's efforts in the case resulted in the plaintiffs obtaining an early inspection of the compounding pharmacy that allowed experts to investigate and take samples from the facility. The preservation of evidence not only helped leverage a settlement with NECC, but also helped identify additional responsible parties, many of which chose to take part in the bankruptcy settlement.

Dougherty also plays a leadership role in transvaginal mesh litigation consolidated in Massachusetts state court. She was a lead negotiator in a global settlement of some 1,000 cases on behalf of nearly 30 law firms in 2014.

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Q. How did the results from your early inspection of the NECC facility assist in negotiations with clinics that bought drugs from the company?

A. I was able to say, "Here's what we found at NECC. Here's what you would have found if you had done any due diligence whatsoever before you injected your patients in the spine with a preservative-free drug, which is obviously open

to contamination because there's no preservative." There are guidelines out there for clinics that outsource their pharmaceutical compounding. And one of the first things on the list is: Go visit the facility unannounced at least once annually. And so, basically, I [said], "This is what you would have found." It was horrific. The pictures speak louder than any words you could say because of the photographs that we had from the inspection showing how disgustingly dirty the place was. They had pulley systems above the clean room with 12 different buckets with hoses connected to collect the water from the ceiling that had a hole in it. They had, right above the clean room, all sorts of really dirty, toxic materials.

Q. You earned a master's degree in social work from Columbia University before going to law school. Why did you shift gears?

A. I just kept seeing sort of systemic problems, and, while you could help one individual at a time, the system seemed like it needed to be changed because you were helping one individual with a lot of the same problems that were affecting everybody. So, at the time I thought, well, while I love that I can help individuals, in order to have a greater impact it would be better to probably have a law degree to try to effectuate change on a macro level.

Q. How did mass torts, specifically, become your specialty?

A. Going into law school I wasn't sure where that would necessarily lead me. Was it legislation? Was it litigation? I had a co-op — because I



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went to Northeastern — at Robinson & Cole, and at the time they had a mass tort department, and I just loved it. Right then and there I just knew that's what I wanted to

do. I thought about it a lot. In terms of legislation, I thought, well, you've got to compromise when it comes to legislation. You can't have your language. Someone is going to come in and try to tweak it and do something different, whereas with litigation you don't have to compromise. You can go in and you say, "This is what I think you did wrong, company. This is what I think you should have done, and people wouldn't have been hurt if you did the right thing." You don't have to compromise in that sense, and I believe litigation effectuates positive change in the way I was wanting to do it. We've even seen it in the compounding case and in the mesh cases.

— BRANDON GEE