

**STATE OF NEW MEXICO
COUNTY OF DONA ANA
THIRD JUDICIAL DISTRICT COURT**

**CHARLES DAILY and
ROSA ELEAN ALVAREZ MARTINEZ,**

Plaintiffs,

v.

No. D-307-CV-2017-00672

**MICHAEL E. BROWN,
BONES, INC., a New Mexico Corporation,
and NCMIC INSURANCE COMPANY,
a foreign insurance company,**

Defendants.

FIRST AMENDED COMPLAINT

1. Charles Daily (“Bud”) is a resident of Sierra County, New Mexico. Bud is married to Rosa Elean Alvarez Martinez (“Rosa”), who lives with Bud. Bud and Rosa have a mutually interdependent relationship.

2. Michael E. Brown (“Brown”) holds himself out to be a chiropractor licensed in New Mexico. On information and belief Brown’s principal place of business is in Dona Ana County. On information and belief Brown owns and operates at least two chiropractic clinics: Rio Grande Chiropractic Center (“RGCC”) in Sierra County, New Mexico and his principal one, Mesilla Valley Chiropractic Center (“MVCC”) in Dona Ana County, New Mexico. Brown is also the President of Bones, Inc., a New Mexico corporation with its principal place of business in Dona Ana County, New Mexico. On information and belief RGCC and MVCC are not independent legal entities but are parts of, are owned, and are operated by, Bones, Inc.

3. Bud became a patient of the Defendants and remained a patient from about October 2015 through at least March 29, 2016. During this time the Defendants injected Bud with substances

including Traumeel, Zeel, Sarapin, Neuralgo-Rheum, Lymphomyosat and Spascupreel. These substances will be called “homeopathic substances.” Additionally, the Defendants also injected Bud with Procaine. All the substances were mixed together in one syringe by the Defendants and their employees working within their scope of employment and injected in multiple sites in Bud’s body by Brown.

COUNT ONE

4. Bud realleges all earlier paragraphs.

5. The Defendants, when treating Bud, failed to possess and apply or use the knowledge, skill or care of similar reasonably well-qualified providers in similar circumstances.

Among other things, some of the ways the Defendants were negligent included the following:

a. Not developing adequate policies, procedures and practices for safely mixing medications and injecting them into patients.

b. Injecting substances that the Defendants contaminated with microorganisms because of their improper and inadequate procedures preparing the substances for injection.

c. Not following NM Department of Health, Center for Disease Control and other guidelines and practices and procedures when preparing and injecting substances into patients.

d. Injecting worthless substances that created no benefit into patients.

e. Misdiagnosing Bud’s condition.

f. Failing to obtain informed consent for the injections by not telling Bud the injected homeopathic medications were worthless, not shown by appropriate medical evidence to benefit patients, and only created risks of infections and other injuries. A reasonable person in Bud’s position would not have consented to the homeopathic injections if so informed.

g. Running clinics that created serious public health hazards to the general public, requiring on-going monitoring by the New Mexico Department of Health.

6. The Defendants were reckless and showed extreme indifference for the health and safety of patients like Bud. The entities authorized, participated in or ratified the reckless and culpable conduct of the individuals.

7. As legal results of the wrongful conduct of the Defendants, Bud developed abscesses throughout his body that ate away joints, including his hip joints. He has had prolonged hospitalizations, multiple surgeries, requires and continues to require medical and surgical services, has been permanently and severely injured, has permanent disabilities, has lost significant enjoyment of life, has had emotional difficulties from intractable pain and has suffered other damages.

WHEREFORE, Bud requests judgment for compensatory and punitive damages against the Defendants, for costs, pre-and post-judgment interest, and all other appropriate relief.

COUNT TWO

8. Rosa realleges all earlier paragraphs.

9. As legal results of defendants' wrongful conduct that injured Bud, Rosa has partially loss the companionship, services and consortium of Bud.

WHEREFORE, Rosa requests judgment for compensatory damages against the Defendants, for costs, pre-and post-judgment interest, and all other appropriate relief.

COUNT THREE

10. Bud and Rosa reallege all earlier paragraphs.

11. NCMIC is an insurance company with its principal place of business believed to be in Iowa.

12. NCMIC issued a professional liability insurance policy to Brown and Bones, Inc. in effect from October 3, 2015 to October 3, 2016. The policy number is MP00086887. This policy would be available to pay some of the damages in this case if Plaintiffs prevail.

13. Plaintiffs request the court to declare the rights of the Plaintiffs under this policy, under §44-6-1 et seq NMSA. A specific request is that the Court declare that the limits of liability for the injuries complained of by Bud and Rosa are a total of \$600,000, not \$200,0000.

WHEREFORE, Plaintiffs request a declaratory judgment that the policy limits of the insurance policy be declared to be \$600,000 for the combined injuries to Bud and Rosa, costs of this action, and all other relief to which they are entitled.

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By: “Electronically Filed”
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CERTIFICATE OF SERVICE

I certify that on October 12, 2017, this First Amended Complaint was served on the following counsel of record via U.S. Mail:

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