

Lewis Brisbois Wins Sanctions In Clinic's Deposition Demand

By Bonnie Eslinger

Original article found online at: <http://www.law360.com/articles/720047/lewis-brisbois-wins-sanctions-in-clinic-s-deposition-demand>

Law360, Los Angeles (October 28, 2015, 10:26 PM ET) -- A California state judge awarded sanctions to [Lewis Brisbois Bisgaard & Smith LLP](#) on Wednesday against a Los Angeles clinic accusing the firm of negligence in a medical malpractice lawsuit that left it facing a \$6 million judgment, saying the clinic made an unnecessary deposition request.

In awarding \$3,377 to the law firm, Superior Court Judge Malcolm Mackey said in court that [Family Planning Associates Medical Group](#) Inc.'s bid to compel the deposition of the firm's most knowledgeable person was futile since they'd already had a seven-hour session with the lawyer who handled their case.

"We're chasing a phantom here," Judge Mackey said.

Family Planning Associates had moved to compel Lewis Brisbois to produce for an additional deposition the law firm member most qualified to testify about matters such as how the firm reports developments to insurers, and the clinic thought it deserved sanctions when the law firm refused.

The clinic and doctor Rubin Marmet [filed the suit](#) against Lewis Brisbois in January 2013, claiming the firm had not adequately protected their interests in the underlying suit by taking on their defense along with a second doctor, Lawrence Hansen, without a conflict-of-interest waiver. The three were hit with the \$6 million judgment in January 2012.

The clinic, Marmet and Hansen were sued for medical negligence by a woman who gave birth to a disabled child after two failed abortion procedures. Marmet and Hansen each performed one of those procedures at the clinic, according to the complaint.

In court Wednesday, Marta Alcumbrac of [Robie & Matthai](#), representing Lewis Brisbois, told Judge Mackey that Family Planning Associates already deposed the person most knowledgeable, partner Linda Star, the attorney who represented the clinic and doctors.

Additional responses sought by the clinic were overly broad and "incomprehensible," Alcumbrac said.

"You already had a seven-hour deposition," Judge Mackey said, turning to the attorney for the clinic, Mark Lester of Lester & Cantrell LLP. "What do you want on this, then?"

Lester told the judge that the firm now wanted to get the testimony of the PMK, or person most knowledgeable.

“It's a specious argument that lawyer who handled the case in an 800-lawyer firm ... takes the place of the person most knowledgeable of the firm,” Lester said.

The judge said after reviewing the filings, he felt “a lot of things were answered on this.”

“I don't know what's left,” he said.

Lester said that among other questions, the plaintiffs were seeking to know how conflict-of-interest policies were handled by the firm overall.

Alcumbrac said Star had answered that question. Attorneys at Lewis Brisbois evaluate whether a case involves a conflict of interest and whether a waiver should be sought “based on the facts of the individual case,” she said.

“It's been asked and answered,” Alcumbrac said.

When Lester suggested that Alcumbrac was “confusing the issue,” Judge Mackey interrupted.

“She’s not confusing the issue, I’m looking at it,” the judge said.

Lester said the clinic wanted to determine whether Star had “adhered to the firm's standards,” to which the judge made his “phantom” comment.

Lewis Brisbois had been selected to defend the case by the clinic’s medical negligence insurance carrier, Burlington National Indemnity Ltd., according to the instant complaint.

The insurer then said that the policy limits on the clinic’s medical negligence claim were only \$1 million, leaving Marmet and the clinic on the hook for the more than \$5 million that remained, the complaint says.

Marmet and the clinic say that the law firm failed by not ensuring the defendants were represented by separate counsel in the underlying suit, and that it should have led them to a settlement in light of their exposure to a judgment that could, and did, exceed the insurance policy limits.

Ruben Marmet is represented by Steven P. Goldberg of Goldberg & Gille.

Family Planning Associates is represented by Mark Lester of Lester & Cantrell LLP.

Lawrence Hansen is represented by Patricia Law of The Law Offices of Patricia A. Law.

Lewis Brisbois Bisgaard & Smith LLP is represented by Edith R. Matthai and Marta Alcumbrac

of Robie & Matthai.

The case is Rubin Marmet et al. v. Lewis Brisbois Bisgaard & Smith LLP, case number BC499232, in the Superior Court of the State of California, County of Los Angeles.

--Additional reporting by Sindhu Sundar. Editing by Brian Baresch.

Related Articles

- [Lewis Brisbois Sued Over \\$6M Medical Malpractice Ruling](#)