

Judge Axes Boies Atty Sanctions Over Long Deposition

By **Emily Field**

Law360, New York (November 16, 2016, 8:05 PM EST) -- A Florida state judge nixed sanctions imposed against a Boies Schiller partner representing Philip Morris USA Inc. in a tobacco liability lawsuit who had argued that he wasn't even present when the judge decided that sanctions were warranted.

Brevard Circuit Judge Charles Roberts in a short order Monday vacated sanctions imposed in a hearing last month, in which he criticized Luis Suarez's five-hour deposition of an oncologist serving as an expert in the case as excessive and a waste of time.

Philip Morris, however, argued in a motion last week that defense counsel had to move slowly because the doctor was ill-prepared for the deposition, having only reviewed roughly a dozen pages of Paul Dubinsky's medical records, whom the doctor treated 12 years ago.

"On Oct. 17, 2016, Defendants deposed Dr. Lee Scheinbart for four hours and forty-four minutes," Philip Morris said. "Despite having treated Mr. Dubinsky for eight months, Dr. Scheinbart's strikingly limited preparation for the deposition slowed down the pace of the deposition significantly."

Philip Morris also contended that Suarez hadn't been present at the Oct. 26 hearing to defend himself when the judge decided of his own accord to impose sanctions, according to the filing.

Additionally, Philip Morris pointed to comments in **articles** by Dubinsky's counsel that called his behavior at the deposition "particularly egregious" and "unprofessional."

"These incendiary allegations, in a very public forum, make the court's order that much more problematic," Philip Morris said.

The judge did keep part of his order giving both Suarez and counsel for R.J. Reynolds another hour each to depose Dr. Scheinbart in order to respond to pertinent unanswered questions.

The sanctions would have required Suarez to foot the attorneys' fees and travel expenses for the additional time.

Dubinsky's widow, Abigail Dubinsky, accuses Philip Morris, R.J. Reynolds Tobacco Co. and others of contributing to his death.

She claims that the skin cancer and chronic obstructive pulmonary disorder that contributed to his death were caused by smoking cigarettes.

Dubinsky's lawsuit is an Engle progeny case, which arose out of the Florida Supreme Court decertification of a class action lawsuit in 2006 that overturned a \$145 billion verdict against the tobacco companies over smoking-related diseases.

The decision allowed as many as 700,000 people to file individual lawsuits against the tobacco companies. The trial for the case is set for November 28.

Counsel for Philip Morris declined comment. Counsel for Dubinsky didn't immediately respond to requests for comment on Wednesday.

Dubinsky is represented by Laura M. Shamp of Shamp Speed Jordan & Woodward, Leslie J. Bryan of Doffermyre Shields Canfield & Knowles LLC and S. Sammy Cacciatore and John N. Hamilton of Nance Cacciatore.

RJ Reynolds is represented by Troy A. Fuhrman R. Craig Mayfield Benjamin H. Hill of Hill Ward Henderson and Ursula M. Henninger, W. Randall Bassett Frank T. Bayuk Jennifer C. Kane and Bethany L. Schneider of King & Spalding LLP.

Philip Morris is represented by Lawrence V. Ashe, Patricia Melville and Luis Suarez of Boies, Schiller & Flexner LLP.

The case is Dubinsky VS RJ Reynolds et. al., case number 05-2014-CA-026783, in the 18th Judicial Circuit Court of the State of Florida.

—Additional reporting by Matthew Guarnaccia. Editing by Joe Phalon.