

Betman v Mount Sinai Hosp. Groups, Inc.
2020 NY Slip Op 33920(U)
November 25, 2020
Supreme Court, New York County
Docket Number: 805461/2016
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER
Justice

PART 6

**LUCIANO BETMAN AN INFANT BY HIS M/N/G
ANTONIETTA BETMAN AND ANTONIETTA BETMAN,
INDIVIDUALLY,**

INDEX NO. 805461/2016

MOTION DATE

Plaintiffs,

MOTION SEQ. 4

- against-

**MOUNT SINAI HOSPITAL GROUPS, INC., MOUNT
SINAI HOSPITAL, MOUNT SINAI HEALTH SYSTEM,
ABIGAIL K. ALLEN, M.D., JOHN DOE, M.D. AND JANE
DOE, M.D.,**

MOTION DATE

Defendants.

The following papers, numbered 1 to _____ were read on this motion for/to

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answer — Affidavits — Exhibits _____

Replying Affidavits

█
█
█
█
█

Cross-Motion: X Yes No

Defendants have moved by Order to Show Cause to compel discovery from Plaintiffs. Plaintiffs cross-moved to compel discovery from Defendants.

The parties were heard on the record on November 18, 2020 via Teams.

By way of background, Plaintiffs allege that that surgery performed by Defendant Dr. Abigail Allen (“Dr. Allen”), a Pediatric Orthopedist at Mount Sinai Hospital, on Luciano Betman (“Luciano”) on June 5, 2014 was not indicated. Plaintiffs allege that Defendants treated Luciano from April 23, 2013 through September 29, 2014. Plaintiffs allege that Defendants implanted plates called “8 plates” “on the growth plates on the medial sides of [Luciano’s] distal femurs and proximal tibias to reverse what was essentially misdiagnosed by [Dr. Allen] (Mount Sinai defendants vicariously) as knock knees.” Plaintiffs contend that “[b]ecause the surgery was contraindicated and because Dr. Allen deviated from the standard of care in failing to advise plaintiffs that the ‘8 plates’ needed to be

removed, Luciano developed a left bowlegged condition requiring an additional reconstructive surgery- osteotomy, plates and a Taylor spatial frame for slow correction of the deformity.”

Luciano’s mother commenced this action on Luciano’s behalf and on her own behalf. Luciano, who is now in college, initially claimed both physical and psychological damages in this action. Plaintiffs’ counsel stated on the record that Plaintiffs have withdrawn Luciano’s claims for psychological damages.

The Court starts its review of the discovery that Defendants seek from Plaintiffs.

Defendants contend that Plaintiffs have not provided outstanding authorizations for Luciano’s treating physicians and therapists, including Luciano’s therapists from 2001 and any other therapists prior to 2014. Defendants contend that Luciano testified that he cannot swim, perform other sports and social activities and that in general, he has suffered psychological injury as a result of the alleged malpractice. As stated on the record, Defendants are entitled to these authorizations for a limited period. As noted on the record, Plaintiffs have withdrawn all claims for psychological damages. Additionally, Plaintiffs’ counsel stated on the record that there is no claim that Luciano could not swim as a result of this surgery – only that he could not swim one summer after the surgery and the one school year thereafter. Plaintiffs’ counsel stated that he would provide the time period that Luciano was affected by the surgery to the extent that he could not swim. Discovery beyond that time period is not relevant.

Further, Defendants are entitled only to authorizations for medical providers that provided care to Luciano that is relevant to Luciano’s claimed injuries and alleged malpractice. However, Defendants have not demonstrated how the care provided by providers such as Luciano’s pulmonologists Dr. Alison Kole and Dr. Leichter are related to the claimed injuries and alleged malpractice.

Additionally, Defendants have not demonstrated the relevancy of their request for Luciano’s college records and his records from Student Health Services at Loyola. As Plaintiffs’ counsel asserts in his opposition papers, “[T]here are no claims that these injuries claimed are affecting his college grades and he is not medically treating for the loss of range of motion, scarring or nerve damage claimed for at least the last two years.”

Defendants also seek updated authorizations for all treating physicians including but not limited to, Summit Medical Group, Luciano's pediatric group, Overlook Hospital (updated), any primary care providers, Dr. Widmann (updated), Hospital for Special Surgery (updated) and any updated collateral source authorizations. Plaintiffs contend that "updated/more HIPPA's are not required because Luciano Betman has not treated for the injuries claimed for at least the last two years." The Court finds that Defendants have not articulated a reason for "updated" authorizations from the identified providers.

Defendants also assert that Plaintiffs have not produced a schedule and documentation of special damages. Plaintiffs are directed to produce documentation concerning their request for special damages. If no further documentation exists, Plaintiffs are to provide an affidavit stating the same.

The Court now turns to Plaintiffs' cross motion to compel discovery from Defendants. As noted on the record, Defendants do not have to exchange the records they received after processing the authorizations.

Plaintiffs also seek information relating to a case that Dr. Allen testified about during her deposition. The information includes the caption of the case, Dr. Allen's deposition transcript from the case, "Dr. Allen's attorney name, address and authorization to release non-privileged portions of the file," and Dr. Allen's professional liability insurance in effect related to the case. Defendants contend that this demand is frivolous because it relates to a case involving unrelated care years earlier and is completely unrelated to the allegations in this action. Defendants state, "As Dr. Allen testified, the earlier case involved a toddler's injury to the femur; the instant matter relates to surgery performed to correct a knee condition and there was no injury to the Plaintiff's femur; indeed, the claim in this case is that the surgery was not indicated - not that it was improperly performed." Plaintiffs are entitled only to the caption of the case that Dr. Allen testified about during her deposition. Plaintiffs have not shown the relevancy the other information related to the case.

Plaintiffs also seek responses to their Demands for Identification. Plaintiffs request identification "regarding the surgical assistants listed on the Operative Report, the name appearing on the purported Informed Consent form and any witnesses to the purported informed consent." As noted on the record, Defendants shall provide the last known addresses for the two individuals who signed the consent form. Defendants will further advise Plaintiffs if any other

individuals were present when the subject procedure was discussed, and informed consent was obtained. Defendants shall identify those individuals and their last known addresses. If there are no such individuals, Defendants will provide an affidavit stating the same.

Plaintiffs also demand the identification “of receptionists/clerical staff employees/agents working on June 17, 2014, July 8, 2014 and September 29, 2014.” This demand is deemed overly broad.

Plaintiffs also demand the identification of “[t]he name(s), title(s) and deposition date and time for agent(s) and/or employee(s) of defendants Mount Sinai Hospital Groups, Inc., Mount Sinai Hospital, Mount Sinai Health System and Abigail K. Allen that defendants intend or may call at trial as witnesses.” The Preliminary Conference Order of November 30, 2017 specifically states that the “parties shall exchange names and addresses of all fact witnesses concerning liability and damages (other than expert witnesses) no later than 60 days before trial. Parties shall also exchange adverse party statements within that same period.” Further, the parties have stipulated that Dr. Allen was an employee of Mount Sinai Hospital at all relevant times regarding the claims made in this litigation. No further response to this demand is necessary at this juncture.

Wherefore it is hereby

ORDERED that Defendants’ motion is granted only to the extent that Plaintiffs shall produce authorizations relating to psychological injuries for a limited time period as noted in the record within 15 days; and it is further

ORDERED that Plaintiffs shall provide the timeframe in which Luciano allegedly could not swim because of the surgery within 15 days; and it is further

ORDERED that Defendants shall produce all documentation relating to their request for special damages and provide an affidavit stating if no further documentation exists within 15 days; and it is further

ORDERED that Plaintiffs’ cross motion is granted only to the extent that Defendants shall provide the caption of the name of the case that Dr. Allen testified about during her deposition; and it is further

ORDERED that Defendants shall provide the last known addresses for the two individuals who signed the consent form. Defendants will further advise

Plaintiffs if other individuals were present when the subject procedure was discussed, and informed consent was obtained. Defendants shall identify those individuals and their last known addresses. If there are no such individuals, Defendants shall provide an affidavit stating the same; and it is further

ORDERED that the parties shall appear for a status conference on January 6, 2021 at 11:30 am via Teams.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: November 25, 2020

ENTER: 
_____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION