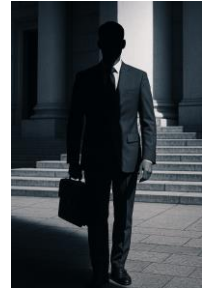


## Fifth Circuit Holds No Immunity for Attorney Fraud, Vacates Damages Over Missing Analysis, and Flags Seventh Amendment Jury Trial Question

*[Lewis Brisbois v. Bitgood et al., No. 24-20458 \(5th Cir. 2025\)](#)*

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In an unpublished per curiam opinion, the Fifth Circuit affirmed a permanent injunction against a trio of defendants, rejected an attorney immunity defense, vacated a \$1.5 million trademark damages award, remanded for a consideration of statutory damages, and instructed the district court to consider whether the Seventh Amendment requires jury determination of statutory damages.



The dispute originated in Texas state court where defendant Michael Bitgood, via his attorney Susan Norman, sued a corporate landlord represented by Lewis Brisbois Bisgaard & Smith LLP (“LBBS”), a California limited liability partnership licensed to conduct business in Texas. During those proceedings, Bitgood and Norman discovered that LBBS’s foreign limited liability partnership registration with the State of Texas had lapsed so Bitgood registered with the Texas Secretary of State a domestic limited liability partnership, a sham entity, under the name “Lewis Brisbois Bisgaard & Smith, LLP.” They then enlisted Bradley Beers, also an attorney, to prepare and file an assumed-name certificate with the state under the same name. Next, Bitgood and Norman amended the state-court petition to include the sham entity as a party and proffered filings with the state court under LBBS letterhead. In response to a cease-and-desist letter, defendants responded by sending business cards purporting to be Lewis Brisbois Bisgaard & Smith, LLP. The real LBBS then filed suit in federal district court against the three defendants for trademark infringement, trade name infringement, and unfair competition. The district court granted LBBS’ TRO restraining defendants from using, LBBS’ trademarks, the name Lewis Brisbois Bisgaard & Smith LLP, or initials “LB” or “LBBS,” and further restricting the defendants from representing that they were in any way affiliated with the real LBBS. Ultimately, the district court granted LBBS summary judgment on its trademark-infringement and unfair-competition claims, as well as a permanent injunction, statutory damages, and attorney fees finding that defendants infringed LBBS’ trademarks through their unauthorized use of LBBS’s name and marks in representations made to the court and in pre-litigation communications with LBBS.

The three defendants filed separate appeals. The Fifth Circuit affirmed the permanent injunction and addressed only those appellant arguments that were not “incoherent” or “frivolous.” Notably, defendant Beers argued that his conduct was shielded by attorney immunity because preparing and filing business documents fell within the scope of legitimate legal representation. The panel rejected that argument, emphasizing that attorney immunity does not extend to fraudulent or deceptive acts, even when performed under the guise of client service emphasizing that “[t]his is precisely the type of wrongful activity that falls outside the scope of attorney immunity.” The panel agreed with the district court’s finding that Beers “communicated extensively” with his co-defendants, knew the real Lewis Brisbois existed, and nonetheless worked with his co-defendants to assist in forming their infringing entity to harm LBBS. Citing a Texas Supreme Court decision, the Fifth Circuit reaffirmed that an attorney’s “participation in independently fraudulent activities is foreign to the duties of an attorney and not shielded from liability.”

As to damages, the defendants argued that LBBS’s relevant registration had lapsed from 2020 to 2022, which was when their conduct occurred, so statutory damages for “a registered mark” were unavailable.

Because the district court had not explained its statutory damages basis or made findings tying the award to any registered mark, the Fifth Circuit vacated the statutory damages as to each defendant and remanded. The panel specifically instructed the district court to consider whether the Seventh Amendment requires submitting the amount of statutory damages to a jury, though the court expressed no opinion on the issue. The opinion raises an interesting question about the right to a jury on statutory damages amounts but more notably, it underscores an important principle: lawyers cannot convert professional privilege into a license to deceive. The practice of law does not excuse participation in misconduct—it magnifies the duty to avoid it. Attorney immunity is not a safe harbor for fraud.